

Marriage Law
Defence Tracts.

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C. K. OGDEN



TRACTS

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MARRIAGE LAW DEFENCE UNION.

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TO meet the convenience of those who wish to have the Religious grounds for opposing the legalisation of Marriage with a Deceased Wife's Sister, and those of a Social and Political nature, more handily arranged for separate reference, these two Volumes are now issued.

As, frequently, in one Tract all the various reasons for resisting the change have been set forth it was not possible to make either volume treat solely of its own topic, but it is hoped that no argument on the one ground has been given solely in the other volume.

In the Table of Contents is specified what each Tract contains and the page where it begins. An Index at the end of each volume gives assistance in finding where and by whom the various arguments are stated.

To those who desire further to study particular points, we commend the various works of which a list will be found at the end of either volume.

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Marriage Law Defence Union Tracts.

No. V.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

What do Plain Facts say

As to Marrying our Wives' Sisters?

AS the selfish persistence of a small knot of interested persons has again revived the agitation for legalising marriage with a wife's sister, I desire to place a few facts before plain people to help them in coming to a decision upon the question, which I shall look upon—(1) Religiously, (2) Socially, (3) Legally, (4) Historically, and (5) Practically. The hollowness and selfishness of the dreary agitation is shown by the fact that for more than a generation, and until very recently, when a few Members of Parliament have lent their names, the whole affair has been carried on by an anonymous society working through a salaried secretary. On the other hand, the defenders of the old marriage law have never scrupled to publish their names, conscious as they are of the wide support of men, and still more of women, in every class of life who regard the proposal with horror; while the very repulsiveness of many of the considerations which the

question provokes deters those who feel most deeply from speaking out publicly.

To come to our facts, and to look on the prospect opened to us of being able to marry our wives' sisters :—

First, *Religiously*.—The marriage law of England is based chiefly upon the teaching of Scripture by making the ' Levitical degrees ' the rule of lawful and unlawful marriages. The advocates of the change go about shrieking that the Scriptural argument against the lawfulness of marriage with a wife's sister is given up, and that our table of prohibited degrees does not represent the Levitical rule. Both assertions are absolutely baseless.

The Levitical Law is, of course, the law of the Old Covenant, given, as our Blessed Lord Himself tells us, when speaking on the relations of husband and wife, by Moses with a regard for the ' hardness of the hearts ' of the Jews. It is less perfect and less strict than the perfect law of the Gospel. So, whenever any indulgence of man's passions is forbidden by the Levitical Law, so much the more will that action be forbidden in the Gospel ; while, on the other hand, it is not so certain that whatever is not forbidden in the Law must, therefore, hold good under the Gospel. Divorce, as to which our Lord offered that explanation, is a case immediately in point ; so is the connivance shown towards polygamy.

Keeping this truth in view, it is certain either that marriage with a wife's sister is forbidden in Leviticus, or else that Leviticus allows the foulest iniquity.

The table of prohibited degrees in Leviticus is framed on a consistent and intelligible principle—that of referring to each pair of corresponding degrees, such as father and daughter, or son and mother, nephew and father's sister, or nephew and mother's sister, and so on. Both of them are not always named, but occasionally one only is, while the other is left to be inferred. In the present case 'thy brother's wife' is named, but 'wife's sister' is left to be inferred. *The man who denies this inference will be bound to contend that there is no sin by the Jewish law in a union of a man with his grandmother or with his daughter, because Leviticus passes over these degrees and fixes its prohibition on a man marrying his granddaughter or his mother.*

Secondly, *Socially*.—Turning our wives' sisters into our possible wives would revolutionise family life. Now the wife, while in health, smiles on the affectionate intimacy of her husband and her sister, because she knows that it always must be the intimacy of a brother and a sister. If she feels that her end is near she clings with a deeper, purer satisfaction to the sight, for it is to her the warrant that her orphaned children will find in their own aunt another mother who never can become their stepmother. Alter the law to gratify Sir Thomas Chambers's friends, and all will be changed ; to the wife, alike in health or on her death-bed, her sister must be—for the law will have so ordained it—her future rival, as the stepmother of her children, and as the mother of her husband's second family ; and the more closely

the husband and the sister-in-law are drawn together the more certain will be the woeful anticipation, in the eyes of the helpless wife and mother, that the marriage bed is being spread for her sister, whose offspring will be the rivals if not the supplanters of her own motherless orphans. Endearments which now hallow the family circle, as they denote the innocent affection of brother and sister, may then be clouded with the sinister suspicion of being the toyings of lover and paramour.

The pretext that the change would be a benefit to the poor is worthless, if the marriage is in itself a wrong thing ; for a ceremony cannot wipe away the sin of incest ; and in any case experience shows that, as among the working classes families disperse, the wife's sister is not the woman whom the widower would most naturally call in to take charge of children and home. The cases that can be shown of concubinage between men and their sisters-in-law are only a small percentage of that vast mass of concubinage, incestuous and otherwise, which is so great a national sin ; and the argument, to be worth anything, must be pushed to the abolition of almost all prohibited degrees, and the reduction of marriage, as in Prussia and New England, to a merely temporary alliance, so that no man may have an excuse for not being able by law to call the woman with whom he is happening to live for the moment his wife.

Thirdly, *Legally*.—We have, under the head of 'religiously,' explained the principle on which the English law of prohibited degrees is based ; we must

here briefly notice a very common and shameless misrepresentation to which the leading advocates of the change do not blush to have recourse. Their story is, that, before the passing of Lord Lyndhurst's Marriage Act of 1835, marriages with a wife's sister were lawful. This is an audacious misrepresentation.

Lord Lyndhurst's Act made no difference in the table of prohibited degrees. All that it did was to make it more easy than before to detect and annul unlawful marriages. Up to the passing of Lord Lyndhurst's Act marriages within the prohibited degrees were what lawyers call 'voidable.' That is, though they were unlawful, yet the unlawfulness had to be proved during the lifetime of both parties, while, if this proceeding were neglected, no proof could be offered after the death of the man or the woman. The trick resorted to was to set up a collusive suit, which was kept simmering till one or other of the couple died, so as to shut out any other real one. Thus *a man might marry his nearest of kin, and by keeping up a collusive suit he might have prevented the horrible union from being voided.* All that Lord Lyndhurst's Act did was to put a stop to this great scandal by declaring all such marriages 'void' for the future, so that they could be attacked whether the offending couple were still alive or not.

Fourthly, *Historically*.—One fact is enough to state. It is a matter of absolute historical certainty that as a rule these marriages have never been tolerated in any of the Christian communities of the east; the first dispensation for one of them in the

west, dates from that most unhappy epoch in church history, the beginning of the fifteenth century. At first dispensations were given with extreme rarity to please princes and great men.

The recent Parliamentary history of the measure has been as much falsified by its advocates as every other incident connected with it. The facts, in the briefest compass, are that whenever it has cropped up in the House of Lords it has been defeated, while by looking back for sixteen years to the division lists of the House of Commons we find that it was defeated in the Parliament of 1865, that it passed in the Parliament of 1868, and that it was again defeated in the Parliament of 1874. Meanwhile the people of England sat on silent and apathetic, and let the anonymous society waste itself on fustian declamations over the protracted vexations of its manifold rebuffs.

Fifthly, *Practically*.—The proposed change is shamelessly inconsistent and selfish. It claims that the man who covets his wife's sister may marry her; it forbids the woman who is in love with her husband's brother to marry him. Yet these two degrees of affinity are absolutely identical. Nay, more, while it allows the man to marry his wife's sister, it says he shall not marry his wife's sister's daughter, although she is a woman who stands a degree further off in affinity. As the Bill was originally brought into Parliament it included the wife's niece; but the wire-pullers found that the people whose game they were playing happened not to be in love with their

wives' nieces, so they lightened the ship of ballast and threw the poor niece overboard.

They pretend to be shocked when anyone asks them what they mean to do with the brother's widow or the wife's niece, and they protest that they will resist any further relaxation. This is a ridiculous pretence, as may be seen by looking round at the condition of the marriage law in the various countries of Europe.

Alike in Protestant and in Roman Catholic countries—

First, Wherever, either by general law, as virtually in France and formally in Protestant countries, or by way of an exception, as in other Roman Catholic lands, a man can marry his wife's sister, there always he can equally marry his brother's widow, and his wife's niece.

Secondly, Wherever, either by general law, or by way of an exception, a man can marry his sister-in-law or his niece-in-law, there also under the same conditions a man can marry his blood niece, daughter of his brother or of his sister ; and he can also marry his blood aunt, sister of his father or sister of his mother. . This is now the law of France and of Germany, and of nearly all the Continent.

There is no possible halting or looking back. Our present marriage law is consistent, and based on Scripture. The permission to marry a wife's sister being granted, coupled with the table of prohibited degrees being kept otherwise as it is, would be revolting to all men of logical minds from its incon-

sistency, its selfishness, and its contradiction to all natural justice, and nothing could prevent its being replaced by another law as consistent as the present one while differing from it, in rejecting instead of respecting Scripture—the present law, we mean, of Continental marriage. Let Parliament allow a man to join himself to his wife's sister, then it will be but a matter of a brief time before Parliament will have to allow him to marry his mother's sister, perhaps her twin sister—the counterpart, it may be, in mind, in voice, in look, in person of her who bore him.

A. J. B. BERESFORD HOPE.

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Marriage Law Defence Union Tracts.

No. XII.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

What the Conservatives say.

The EARL CAIRNS, at the London Diocesan Conference, February 13, 1883, said that the last speaker had referred to a case in which some misguided person had married his deceased wife's sister and afterwards deserted her. If Mr. Chubb had advocated some measure to punish a person so acting, he might perhaps have felt inclined to agree with him; but why such a case should be a reason for doing away with the law he failed to see. Mr. Chubb had referred also to two names—among the greatest that this country had ever known—as agreeing with him upon a change in the law. With respect to a very dear friend of his own, now no more, Lord Beaconsfield, he could assure Mr. Chubb that he was mistaken. He had spoken also of the present Prime Minister. He was not able to say what the opinion of the Prime Minister upon the subject at present might be, but certainly the right hon. gentleman had advanced very convincing arguments against a change in the law. He rejoiced that this question had been taken up at the first meeting of the London Diocesan Conference, because it was not a question of abstract or of theoretical politics, but one which went deep into the moral and religious life of our families and of the Church. He hoped that the conference would give no uncertain sign, because it was right that the voice of the Church should be heard upon the question, and that it should be distinctly known what the voice of the Church was. There were two reasons which quite satisfied him in offering every opposition in his power to a change in the law. The first was that

as they stood at present they possessed a plain and intelligible principle. A man and his wife were one body. That was not merely the law of the land ; it was not merely even the law of the Church ; it was the law laid down in the highest and holiest code that they possessed. The relations of a husband were the relations of his wife ; the relations of a wife were the relations of her husband. As between man and wife relations of affinity were the same as relations by consanguinity. Change that in one particular and they must change it all. He defied anyone in that room to show him a reason why they should break through the rule with regard to affinity and not break it down altogether. Those who advocated a change in the law felt this, and for a long time—some of them still, indeed—they held out to the public the idea that they did not want to make any general change. Of course, they were very wise in their generation, but even already he observed that that feature was passing away, and last year in the House of Lords he heard one member of that assembly—a man of the highest social position and of the greatest intelligence—openly and boldly confess that he was convinced the time had come for doing away with relationships by affinity altogether as regarded marriage. That must be the consequence. They could not possibly defend the change as affecting the sister of the deceased wife and maintain the law in relation to the wife of the deceased husband. The power of a woman to marry the brother of her deceased husband must be upon the same footing. His second reason was that the advocates of the change in the law were never weary of declaring that the best and most natural guardian of the children of a deceased wife was her sister. But was the consequence of this that they should change the law? The argument appeared to him to be exactly the other way. By this change she would be debarred from the house in the same way as any other single, unmarried woman. The natural person to enter the house was someone who could not marry the father. Therefore, whether they took it upon the highest ground to which he had first referred or upon the second, or utilitarian ground, he maintained that the law should not be altered.

The late DUKE OF MARLBOROUGH, in the House of Lords, May 19, 1873.

He wished to point out that this (the existing Marriage law) was not, and never had been, the law of one particular denomination only. It was admitted by all that the laws of this country had, from the earliest times, been based upon Christianity, and so far the law of the Church and the law of the land went hand in hand ; but the union that existed between them sprang from their common foundation in the Christian faith. Now, in all ages, the opinion of the Church on the question of marriage with a deceased wife's sister had been explicit and unmistakeable. The Canons of Basil were clear in their opposition to it. The 78th canon, referring to penalties, said—

Let the same form be observed in those also who marry two sisters, although at different times.

The noble lord (Lord Houghton) had urged that, in the days of Basil, the most absurd notions as to marriage and the celibacy of the clergy were being adopted, and that this unsettlement of opinion gave his judgment but little weight. Were not men's minds, however, unsettled now, and did we not see extraordinary licence in Prussia and America ? The same argument, therefore, which shook the authority of that Father of the Church would make the opinions of worthies of our own day equally untrustworthy. The noble lord had treated this as a doctrine peculiar to the Roman Catholic Church ; but at that time such a Church could hardly be said to have existed, though the Church was, no doubt, lapsing into some of the doctrines now distinctive of Roman Catholicism. He would proceed, however, to quote the opinion of a Church which set itself up as one of the purest and most reformed Churches on the Continent—that of the Waldenses. The Rev. Dr. Revel, Moderator of that Church, said—

As to the principles maintained by our Church respecting marriages between brothers and sisters-in-law, they are those which we find in the Holy Scriptures on marriages between relations. Our Ecclesiastical Discipline, reviewed in 1839, says—' Marriages between brothers-in-law and sisters-in-law, uncles and nieces, aunts and nephews, and between relations at one degree more near are forbidden.' I find

this same prohibition in the acts of the Synods of 1833, 1828, 1801, and 1789. Our civil law does not permit alliances between a brother-in-law and sister-in-law—that is to say, between a widower and the sister of the deceased wife, any more than between a widow and the brother of the dead husband.

Turning to the Church of Geneva, he found that the 9th decree of the Synod of Vertueil, held in 1567, and drawn up by Calvin, put the question—‘What are those cases of affinity which hinder marriage?’ The answer was—

Let no man marry his brother’s widow, nor any woman him who was her sister’s husband.

The Lutheran divines of Germany, in reply to the inquiry of Henry VIII., said—

It is manifest and cannot be denied that the law of Leviticus xviii. prohibits a marriage with a sister-in-law. This is to be considered as a Divine, a natural, and a moral law, against which no other law may be enacted or established. Agreeably to this, the whole Church has always retained this law and judged such marriages incestuous.

As to Holland, the translators, appointed by the Synod of Dort in 1618–19 inserted this marginal note to Leviticus xviii. 16—

From this law it necessarily follows that a woman who has been married with one brother may not, after his death, marry with another brother; and, upon the same principle, a man who has been married to one sister may not, after her death, marry the other sister.

That Church, according to Dr. Livingstone, had never deviated from this rule. The ninth canon of the Book of Discipline of the Reformed Church of France, adopted in 1559 and revised by 23 succeeding Synods, stated—

It is not lawful for any man to marry the sister of his deceased wife, for such marriages are prohibited, not only by the laws of the land, but by the Word of God.

The law of the Church of Scotland was equally distinct. Its Confession of Faith, drawn up in 1645, said—

Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the Word : nor can such incestuous marriages ever be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife. The man may not marry any of his wife’s kindred nearer in blood than he may of his own, nor the woman of her husband’s kindred nearer in blood than of her own.

These extracts were important as showing that it was not

merely the Roman Catholic Church, or the Church of the early ages, or the Jewish Church, which placed this interpretation on the law of Leviticus; but the universal *consensus* of the whole Christian Church was that there was a Divine prohibition against these marriages.

It was said that the poorer classes desired these marriages; but was that the case? The Commission which sat on this subject in 1847 reported that there were 1,648 cases of these marriages, that only forty were among the poorer, while the remainder were among the richer classes. The origin of this measure was well known. It did not originate with the poorer classes, but with a small body of rich individuals who had knowingly violated the law, and were now asking not only that the past should be condoned, but that these marriages should be declared legal prospectively. If this Bill should be passed, a few sessions only would elapse when other Bills would be introduced to extend still further marriages between persons of other degrees of affinity. What was the state of things in Prussia? Why, in Prussia, marriage between an aunt and a nephew was permissible, and the divorces in Prussia in three years numbered 7,800. Then there was that remarkable country on the other side of the Atlantic, which members of the other House were so fond of quoting when they desired any radical change to be made in our home institutions. A strange state of things had grown up there in consequence of the prevalent lax notions of marriage. He found in a pamphlet, published by the noble and learned lord on the Woolsack some years ago, a letter from a clergyman in America, stating that the law and usages of the different states were exceedingly diverse, and in many states divorces were common on account of the most trivial causes. The writer of the letter went on to relate a story of four couples in a dance, and of each man seeing before him a woman who had been his wife, but who had become the wife of another. But 'our American cousins' had rather a ludicrous way of putting things, and he had fallen in with an extract showing the effect of the lax notions respecting marriage in America. He believed the extract was taken from an American newspaper, and it was as follows:—

I married a widow, who had a grown-up daughter; my father visited our house very often, fell in love with my step-daughter, and married her. So my father became my son-in-law, and my step-daughter my mother, because she was my father's wife. Some time afterwards my wife had a son; he was my father's brother-in-law and my uncle, for he was the brother of my step-mother. My father's wife—*i.e.* my stepdaughter—had also a son; he was of course my brother, and in the meantime my grandson, for he was the son of my daughter. My wife was my grandmother, because she was my mother's mother. I was my wife's husband and grandchild at the same time. And, as the husband of a person's grandmother is his grandfather, I was my own grandfather.

It was added that the man destroyed himself, and the verdict was 'justifiable suicide.'

He earnestly hoped that their lordships would not give their sanction to this measure; for whatever might be said in its favour—and the arguments for it were few—there were hundreds and thousands of persons in the country who would view the change in the law now proposed with the greatest possible regret and repugnance. If they once opened the door to such changes in the law they would bring down the morality of the country from that high and exalted position which it had hitherto occupied in the scale of nations.

The EARL PERCY, M.P., at a meeting at Norwich, February 9, 1883.

He said most frankly that it was the religious objection to these marriages which it seemed to him most necessary to keep in view. Many people would no doubt tell them that divers social evils would result from permitting marriage with a deceased wife's sister, and he had no doubt what they said was true, but that did not seem to him to go to the root of the matter. Although he knew it was not the custom of the gentlemen of his cloth—if he might use the expression—to talk very much upon religious questions at public meetings, yet he was sure no good could be done either upon this or upon any other question by taking any other ground than the highest and the truest. He should not be afraid of stating his views frankly, hoping that at

least they would do him the courtesy to take them into their consideration and carry them away, and turn them over in their minds. Nobody could prevent their rejecting them if they thought right to do so, but they would kindly give him the liberty of expressing them. When he said he was going to use a religious argument, he did not for one moment mean that he was going to use a sectarian argument. He was not going to address one word to one portion, or indeed to any portion, of the great Christian Church, more than to another, but he was going to use an argument which he believed would commend itself to all Christian men. Nor was he going to quote from any particular text. There was a certain chapter in Leviticus, the eighteenth, which they would hear a great deal of argument about, and he was not going to say that those arguments were not sound; but he thought there was a stronger and a higher argument to use than anything based upon one particular text or chapter, and he was going to show them how he believed the whole teaching of the Bible was against marriage with a deceased wife's sister. He was not laying down a law, he was simply stating the question as it presented itself to his own mind; and he found, in the second chapter of Genesis, that in the very beginning of all things God created Adam and Eve, made them man and wife, and said they were to be 'one flesh.' He found that idea running all through the Bible—all through the teaching of God's Holy Word from beginning to end, and one of the most salient points in it. He found that it was brought out more and more as they went on. He found that when they came to the law there were certain marriages prohibited between blood relations, marriages of consanguinity, and marriages between a husband and his wife's relations, or of a wife and the husband's relations—that is, marriages of affinity; and at the beginning of these prohibitions there was a reason given, namely, that these marriages should not take place, because these relations were 'near of kin to one another.' ('Hear, hear,' and a Voice: 'What about cousins?') He would come to the cousins in a moment. When he looked to the Bible he found in the margin that the word 'kin' might be translated 'flesh,' and he said, therefore, that these marriages might

not take place, because the persons were 'near of *flesh* to one another.' Here were two distinct ideas—a man and wife were of one flesh, and the relations of the man and wife were in relation to the other, 'near of flesh.' Into the question of whether the marriages which were prohibited under the Jewish law were binding upon us now, he would not go, and he would make his friend who asked the question a present of his argument, if he meant to say that the Jewish law was not binding. He would give up that argument ; that was not what he was aiming at. But what he said was that, independent of the Jewish law, the statement was made that the husband's relations and the wife's relations were respectively 'near of flesh' to the other—that was a statement of fact. Coming back to this law of marriage, that man and wife were one flesh, he said he found it running through the whole Bible, and the same law was repeated in the New Testament by our Lord Himself. He found at last in the Epistles they got the true reason and meaning of the law that man and wife should become 'one flesh,' because it was a great mystery pointing to the union of Christ and His Church. The symbol was carried on to the very end, for in the last Book of the Bible they found the same symbol of marriage used to point to the highest state of bliss to which man could attain. It seemed to him that anything that broke down the idea of an intimate connection between man and wife, that they were really one, must do something to break down their ideas and their feelings as to that still higher union of which it was the symbol, and he was alarmed when he saw any move made which should appear to admit that that perfect oneness of man and wife was in any degree attacked. He was asked what he thought about cousins. He never heard of a law against marrying cousins. The argument was not that ; the question was not whether the marriage of cousins was expedient, but whether they would allow a man to marry the relations of his wife, whom if they were his own relations he could not possibly marry. The question that had been put to him—he said it with no disrespect—showed, he thought, the confusion of ideas there was in some people's minds, and he and others were there that night, not to force the judgment of those present, even

if they could do so, but to put their views distinctly before them: He had, he thought, given them an idea of what in his opinion lay at the basis of Christian marriage, and why they should try and constantly regard marriages of affinity in the same way as they regarded marriages of consanguinity. He would not detain them even if he could by going into any flowery oration about the inestimable blessings of maintaining among a free people, or indeed any people, high, lofty, and pure ideas of the great institution of marriage; but he was certain that anything that made men and women think less of the perfect union between man and wife, which was the law of humanity from the Garden of Eden until we came to the Kingdom of Heaven, must do an incalculable amount of harm, harm which would reach further than any of them could tell, far further than anything they called 'affecting society' merely; it would go into our hearts, and into the core of our being, and would lead to some evil they might not be able to foresee. He saw many evils that it would lead to, and on the highest ground which he had taken, though of course there were many others, if he had to stand alone, he would oppose the measure that was brought forward to legalise these marriages.

The EARL BEAUCHAMP, in the House of Lords,
June 25, 1880.

Earl Beauchamp, in moving an amendment that the Bill be read a second time that day three months, said, their lordships were fully aware of the very active canvass which had been made on behalf of the Bill, and of the powerful influences which had been brought to bear in its favour. He trusted, however, that their lordships would not be deterred from applying their minds carefully to the examination of a proposal which mainly affected that family life which was the foundation of society and the source of all their present joys. The Bill, he must in the first place point out, contained that very retrospective clause to which so much objection was taken last year; and, considering

the promises repeatedly made by the noble baron (Lord Houghton), that if the Bill was reintroduced it should deal only with the future and not with the past, he failed to understand why this pledge, given only last year, was not redeemed, and why in the Bill on their lordships' table it was provided that all marriages whatever which had been contracted within those prohibited degrees in this kingdom or without should be valid. Some of their lordships might think that, even if it were right to permit such marriages in future, there were good reasons why that legislation which was to apply to the future ought not to apply to the past. Those who had deliberately and with their eyes open entered into marriages which the law forbade, had no just claim to the indulgence now demanded for them. The only reason he had heard from the noble Baron was that these marriages were contracted in enormous numbers. He begged leave to doubt the accuracy of that statement ; but, at the same time, it was a fact that inducements had been held out for many years, and representations had been unblushingly made, that although these marriages were invalid if contracted in England, they would be valid if contracted abroad. No one pitied more than he did persons who had been misled, by those who ought to have known better, into entering into these unions. But, even assuming that they had been contracted, as alleged, in enormous numbers, that was no reason whatever for refraining from considering the circumstances under which they had been contracted. If their lordships were to be told that infractions of the law were to be reasons for changing the law, he asked, where was that principle to stop? Were they prepared to abolish contracts because one of the parties declined to fulfil the conditions into which they had entered? Would they abolish the law against bigamy because some men and women were not faithful to their marriage vows? Or would they repeal the law of larceny because there was an increase of juvenile crimes? He protested against that doctrine as being subversive of all legislation and morality. Their lordships were asked to pass that Bill because it had been repeatedly brought up to them from the Lower House. Now, to urge that the

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measure had constantly received the support of the House of Commons, was grossly to misrepresent the real facts of the case. The measure had been before Parliament since 1841, and there had been eight or nine Parliaments since then, and, speaking broadly, the measure had been before every one of those Parliaments. In the Parliament elected in 1841, the House of Commons refused to allow the Bill to be introduced at all. In the Parliament elected in 1847, the Bill was twice read a second time. In the Parliament of 1853 it was once read a second time, and once rejected on the second reading. In the Parliament of 1857, the Bill was twice read a second time; in that of 1859 the House of Commons twice rejected it; in that of 1866 they rejected it once; in that of 1868 the second reading was four times carried; and in that elected in 1874 the second reading was negatived. This showed that in the majority of Parliaments the House of Commons refused to accept the Bill, and in the Parliament most favourable to the Bill, that of 1868, the majority in favour diminished from 100 to 35. So far as any argument could be drawn from the House of Commons, its votes were conclusive against the Bill. The majority of the House of Commons had rejected the Bill; and, therefore, he hoped their lordships would not listen to misrepresentations which were industriously circulated. The law of England, as it was in this matter, had stood for 1,200 years. It was clearly defined by the Westminster 'Confession of Faith.' The principle there laid down was that a man might not marry of his wife's kin one nearer than he might of his own. This was the principle on which the law rested, and if that principle were once encroached upon he could not tell how they were to escape from further encroachments. The whole of the English family life rested on the clear lines of this marriage law, and when once they departed from these lines they could not possibly stop. It was said there was no country in Europe where those marriages were not allowed, and they were told to take the case of Germany; but their lordships had not been told that wherever these marriages were allowed marriages between uncles and nieces were permitted. Among the royal houses of Germany arrange-

ments of this description were frequent from political purposes ; and there was one case in which a ruling prince had married two of his own nieces in succession who were sisters. The noble Baron had told them to look at America. He should decline to go to America. He did not prefer the social and domestic life of America to that of England. He might point to the peculiar arrangements that prevailed in certain classes in the United States, and would refer their lordships to the enormous number of divorces as a proof of how slender was the family tie in that country. In whose interest was this change in the law proposed ? It could not benefit the children, for in thousands of families the children received the greatest possible benefit from the tender teaching of the mother's sister. But if this Bill became law, the aunt could not give the same attention to her sister's children which she now gave, and desolation and dismay would be brought into hundreds and thousands of homes. Jealousy would take the place of love, and suspicion would be found where now there was confidence. They would not increase the confidence of the children in the aunt by making her a stepmother. It would not benefit the widower, who was now able to seek consolation with his wife's relatives, but who, were the Bill to become law, would be deprived of their society for himself and his children. Who, then, would benefit by this Bill ? The rich and powerful ! No one ventured to say so, and therefore he would pass over that part of the question with this remark—that the money lavished in promoting this Bill could not have come from the very poor. Would this alteration of the law satisfy those who were moving in the matter ? He deplored the well-known fact that among the lower classes so many men and women should be living together without being bound by the marriage tie ; but that was no proof that this was owing to the restrictions imposed by the law upon marriages of the description now in question. He had been supplied with some statistics referring to a certain parish, by which it appeared that out of a total of nearly thirty cases there were three cases of union with a deceased wife's sister, and two cases of union with a wife's sister while the wife was still living ; but there

were seven cases of men living with their own daughters, ten cases of men living with their own sisters, and six cases of men living with their own nieces. Therefore, he said, that if they were to deal with the case of the poor, this measure really brought them no relief whatever; but it did unsettle the foundation of our marriage law. On one occasion, when this law was under consideration in the House of Commons, Lord Russell said that if they made this change in the law they could not stop there—that this change would be, in his opinion, utterly imperfect unless they made it applicable to both sexes and to all degrees of relationship. Those who sought to defend this Bill by resorting to the Scriptural argument would find themselves on very slippery ground. He implored the House not to pass the Bill, because it would destroy the happiness of English homes, and the trust and purity of English family life, while it would introduce confusion into our law.

The BISHOP OF PETERBOROUGH, in the House of Lords, May 19, 1870.

There is a Scriptural argument on which I do lay some stress. I allude to the words of Him whom we all acknowledge to be the Supreme Lawgiver, who, while He in some degree set aside the Levitical enactments, affirmed the broad principle on which they were based. He did lay down distinctly the principle that when a man marries a woman the twain are 'one flesh.' From that I deduce the principle of the law forbidding marriages of affinity—namely, the principle that the relations of the wife are the relations of the husband, and that the relations of the husband are the relations of the wife; a man cannot, therefore, marry a relation of his wife in the same degree as that in which he is forbidden to marry his relation in blood. This, indeed, appears to be a definite and distinct principle on which we can found our legislation. It has a finality. If you do not maintain this principle, you put another and an opposite one in its place—namely, the principle that the relations of the wife are no relations of the husband. Well, supposing you

do this, you must, if you wish to be consistent, go on and abolish the whole of the prohibited degrees in the table of affinity. The noble Earl the Lord Privy Seal, said with reference to the Book of Leviticus—‘ You are not free to take out this or that passage and use it in your own way.’ In the same way I maintain that you are not free to adopt this or that principle, and then conveniently forget that the principle is applicable equally to all the degrees of affinity.

With all due diffidence, then, I maintain that the present law of marriage affirms a certain principle, and the proposed law would be based on another and an opposite one. Nay, I go farther, and say, that principles embodied in legislation are forces which are not under our control. It does not rest with us to say, when we introduce a principle into any measure—‘ Thus far shall it go and no farther.’ We can no more do that with the principles of law than we can with the forces of nature ; and when we once set free a new and distinct principle in any act of legislation, it is certain to work itself out to its necessary conclusion by the logic of events, or by the logic still more powerful, of human passion and human feeling. What I want to know is this— if the principle embodied in the proposed change of the law is to be affirmed, are your lordships prepared to go on and abolish the whole table of affinity ? If not, at what point are we to stop, and what law are we to fall back upon ? The noble and learned lord who just spoke (Lord Westbury) appealed to the law of nature, and seemed disposed to substitute it for the law of the land and the law of the Church. With all due deference to the noble and learned lord, I should like to ask him what nature, or, rather, whose nature it is he means ? Does he refer to the law of the nature of the man who wishes to marry his brother’s widow ? Is that the law of nature which is to be followed ? It seems to be natural that some men should desire to marry their brother’s widows ; but is that a valid reason why the table of affinity should be altered in their favour ? Other men desire to marry their deceased wives’ nieces ; is that circumstance to be adduced in favour of an alteration of the law in their favour ? What law, I again ask, are we to fall back upon ? I lately saw an account of a

man who, in another country which is less troubled than ours by canonical law, married on one and the same day a mother and her daughter, her niece, and three other persons. Now such a man would tell your lordships that he only acted in accordance with the law of his nature, and would exclaim against the cruel tyranny of imposing on him the law of the nature of the noble and learned lord. How, I ask, are we to legislate on anything so vague as this reference to the law of nature? We require something more sure and certain, less shifty, and less liable to be swept away by the tides of human passion and of human error than this vague shadow of 'a law of nature.'

I shall vote against this measure, because it seems to be fraught not only with the political danger of putting the Church in direct antagonism with the State—which in itself is an evil of great magnitude—but also because it is fraught with most serious and dangerous social evils.

THE MARQUESS OF SALISBURY, in the House of Commons, February 19, 1862.

The promoters of the Bill had furnished the House with no valid reason for interfering with the existing law. The hon. and learned gentleman the member for Plymouth (Mr. Collier) had dealt largely in general principles. He started with this grand principle—he said the natural theory was that any man might marry any woman. The hon. and learned gentleman, however, subsequently admitted that there might be some restrictions on that universal liberty, and proceeded to lay down what those were. He then gave the House a number of reasons by which they might test whether those restrictions were sound, and whether, in the case under consideration, a man might avail himself of the universal liberty given to any man to marry any woman. In testing any general principle, the soundest course was, not to test it by the case before them, but to test it by other cases which might arise, and to which the general principle might be applied. In that instance the hon. and learned gentleman's general principle might be applied not only to

the case of those who wished to marry a deceased wife's sister, but also to that of those who wished to marry two wives. He undertook to show that the restrictions which the hon. and learned gentleman said were applicable to the case of a man desiring to marry the sister of his deceased wife did equally apply to the bigamist who wanted to marry two wives. That, he submitted, was a sound and logical way of testing the hon. and learned gentleman's argument. First, as to revelation. The hon. and learned gentleman argued that from Leviticus no restriction or prohibition could be shown ; and he also stated that there was no prohibition in the New Testament. Well, he now begged to apply the same arguments to his present clients, the bigamists. Was there any prohibition in Leviticus, or any in the New Testament, against a man marrying two wives instead of one? He had never heard any argument on the subject, and he thought the hon. and learned gentleman must take the same view of it as he did himself. The hon. and learned gentleman had said that these marriages must be forbidden either by revelation or by a moral instinct accepted by all mankind. He had shown that the bigamist might avail himself of revelation equally with the man who wanted to marry his deceased wife's sister. He now wanted to know whether the prohibition against marrying two wives was a moral instinct accepted by all mankind. It was accepted by Englishmen and Continental nations, he admitted ; but the vast majority of the human race were in favour of marrying more wives than one ; so that it was impossible to say that it was prohibited by a moral instinct accepted by all mankind. The hon. and learned gentleman then went on to say that if these marriages were not forbidden by revelation, or by a moral instinct accepted by all mankind, they ought to be permitted. That is just what his client, the bigamist, might allege. He also said that the House ought not to object to the Bill because it was not prescriptive, but merely permissive—because it did not order anyone to marry his deceased wife's sister, but only stated that anyone ought to be at liberty to do so. Well, the bigamist said—' I do not wish to force any man to marry two wives ; I only want to be left in peace according to my conscience. It is very hard

that gentlemen who do not like to have two wives should interfere with those who do.' The hon. and learned gentleman made use of another argument. He said that if other countries had discovered marriages with a deceased wife's sister to have a bad effect, they would have pressed those evils upon their Governments with a view of putting an end to the cause. Now, did the fact that no pressure had been brought on a Government for the removal of certain evils prove in it elf that those evils did not exist? He wanted to know whether the Turks or the Mormons had pressed for the removal of the evils arising from men having a plurality of wives? There was only one other argument of the hon. and learned gentleman on which he would touch. He said, 'Look at the number of persons who marry their deceased wives' sisters in opposition to your law.' He was afraid that they would only have to consult the police reports every day to see the number of persons who, in spite of all their legislation, insisted on marrying more wives than one. The right hon. gentleman who had last addressed the House had urged them not to be deterred from relaxing the law in this case by any fear that they would be asked to make further relaxations. He said, 'If other cases arise, bring them forward, and let us deal with them.' It could scarcely be doubted that persons would be found ready to bring forward other cases. Unfortunately, cases were constantly arising of men giving way to their passions and violating the law, and then complaining that the law punished them. He could not be satisfied with the principle of the right hon. gentleman (Mr. Headlam) that they should look at the case before them, and not go beyond it. If the Bill passed, he did not see what they were to do, supposing any estimable man—say a duke—wished to marry his stepmother. He did not see how they could refuse to give him that relief which they now proposed to give to the men who wanted to marry their wives' sisters. Once they broke the established law—once they interfered with the law of marriage—they had no logical ground to stand on. They might say they despised logic. His reply was, 'I daresay you do.' But this was not a case in which they could afford illogical and anomalous legislation. The opponents of

restrictions in marriage would make use of every argument in the logical armoury, and Parliament would be forced to withdraw from a position of further opposition. If they passed the Bill, they would set everyone in the kingdom thinking whom they might marry and whom they might not. He was opposed to a violent dislocation of traditionary feelings, or disturbance of existing laws ; and he thought the House of Commons would act wisely in refusing to disturb the marriage law at all. On these grounds he begged to move that the Bill be read a second time that day six months.

The late RIGHT HON. GEORGE WARD HUNT, in the House of Commons, May 2, 1866.

He believed the House would never have heard of this measure, or at all events would not have seen the extensive agitation that had been got up in its favour, had there not been wealthy individuals personally interested, the consequence of which had been that large sums of money had been spent in getting up petitions, and advertisements had even appeared in the public press, offering specific sums for the obtaining a certain number of signatures thereto. The House would understand, therefore, the factitious nature of this agitation. It was represented by the hon. and learned gentleman (Sir Thomas Chambers), and by those with whom he acted, that the alteration sought by the Bill was the only thing at which they aimed, and that, on succeeding in this, their agitation would be disbanded. He (Mr. Hunt) had never in his life heard a statement that showed so thorough an absence of principle. It had been said that affinity was nothing in this question ; it had always been argued that consanguinity was everything and affinity was nothing. If so, why was this particular instance singled out for legislation ? Why did they want to allow marriage with a deceased wife's sister more than with any other person who came within the degrees of affinity ? Why, for the sake of consistency, did they not legalise a man's marriage with his deceased wife's niece, or with his deceased wife's mother ? (A laugh.) It might be an amusing thing for hon. gentlemen

to think of the notion of legalising marriage with a man's stepmother ; but he believed that, in the majority of cases, the mother was more willing to take care of the children than the sister was. What was the argument used on former occasions? Why, it was represented to be a poor man's question, and it was urged that such a man, through want of proper accommodation, could not have his deceased wife's sister living in the same house with him unless they were married. Now, if that argument was worth anything in regard to the one case, why was it not of equal value in regard to the other? If a poor man's house would not admit of his late wife's sister taking charge of the children, how would it admit the wife's mother or the wife's niece? And were not these very proper persons to take care of the children? The advocates of the measure, therefore, would not be consistent if, after they succeeded in their proposal—which he hoped they would not—they did not bring forward a Bill to enact that no marriage should be voidable by reason only of the affinity of the parties. Again, he wanted to put a question with regard to the other sex. If they wished to make it lawful for a man to marry his deceased wife's sister, why should they not allow a woman to marry her deceased husband's brother? The only answer he had ever been able to get to these questions was, 'Oh, but there are special circumstances in the case of a deceased wife's sister. She is the proper person to act as mother to the children.' Now, he did not deny that she was a proper person to take care of the children ; but he wanted to know why she could not do so just as well without marrying her deceased sister's husband? He believed that for one case in which the Bill would secure proper care for the children, there would be ninety-nine cases in which it would deprive them of such care ; for if this Bill became law, would it be possible for any sister of a deceased wife to go and take charge of the children? Would she not be liable to be taunted with seeking to become her sister's successor? and would not her own delicacy of feeling make her shrink from placing herself in a position where a marriage with her brother-in-law might be likely to happen? This Bill would drive away from the motherless homes of England persons who were

now willing to discharge these important duties. The hon. and learned gentleman admitted that if these unions were against God's law, his case was at an end ; but he tried to throw the *onus probandi* on his opponents, and argued that, unless they were proved to be contrary to God's law, they would be upheld. This position, however, would carry him a great deal too far. There was a law that no person under the age of twenty-one could contract a legal marriage without the consent of parents ; but such a law was certainly not to be found in the Bible. This, it might be said, was hardly an analogous case. Perhaps a more analogous case was that of a man having two wives. Now, he (Mr. Hunt) was not aware that there was any prohibition of bigamy in the Scriptures ; and yet the hon. and learned gentleman would hardly maintain that, unless there was such a prohibition, we had no right to forbid a man having two wives.

The hon. and learned gentleman had hardly alluded to the great argument on this question—he meant the social argument. He (Mr. Hunt) maintained that this was a social question, and ought to be treated entirely as a social question. He believed it to be a question in which the domestic happiness of the inhabitants of this country was deeply involved. Unless husband and wife could receive their near relations at their home, three-fourths of the comforts and happiness of married life would be at an end. He believed, indeed, that the relation between a husband and his wife's sister was almost the only case of platonic affection that really existed ; for, under the present law, a wife rejoiced to see friendship and affection between her husband and her sisters, and such affection materially contributed to the comfort and consolation of a husband if his wife was taken from him. A woman was at present able to nurse her dying sister or take charge of her household, without any possibility of jealousy on the part of the wife, or any feeling that her conduct could be regarded as indelicate or unfeminine ; and after the wife's death she was able, without reproach or suspicion, to take the charge of her brother-in-law's house, and be the guardian of his children. If this law, however, were passed, she would in thousands of cases be driven away.

Much had been said upon former occasions as to this being a poor man's question. It appeared, however, from statistics that, since the passing of Lord Lyndhurst's Act, in 1835, there had been 1,648 of these marriages, of which five had been contracted by mayors of towns, seventy by magistrates, persons of title, gentlemen of fortune, and naval and military officers; thirty by clergymen and ministers of the Gospel; 1,503 by merchants and others of the middle class; and only forty by labourers. Those figures entirely set at rest the point whether or not this was a poor man's question, and proved that it was in reality a middle-class question.

He asked the House to reject the Bill, because he believed it would involve an immense amount of discomfort among the people, because it was not called for, and because the agitation in its favour had been got up entirely by a few individuals who had broken the law. He asked the House to reject it, because he believed that the more the question was looked into, and the more it was studied, the more strongly the House would be of opinion that it was desirable to maintain the present state of the law affecting the degrees of affinity.

The VISCOUNT CRANBROOK, in the House of Commons, March 9, 1871.

He wished to ask if the House on any former occasion had ever been called upon to sanction a deliberate breach of the law? It was quite clear—it was written in letters of fire which no one could misunderstand—that these unions were prohibited. In spite of that fact, certain persons related in this way had entered into what they called marriage, but what in reality was no marriage. Had they done so under any misapprehension or mistake? Certainly not. Counsel were constantly being applied to to suggest means by which the law could be evaded; but the law was too well known; it had been the law of this country for 1,200 or 1,400 years, and should not be abrogated unless it could clearly be shown that it was contrary to the law of

God. Why should Parliament go back to sanction the breach of law which a man had knowingly and willingly committed? Who were those who sought to have the law changed? Why did they not show themselves? Why was there a secret agency at the bottom of this movement, and why was it that the people who professed to be the sufferers from this grievance, as they called it, never came before the public themselves, but applied to others to get the work done for them, they supplying only the money? It would be a grievous wrong to sanction a breach of law which had been openly and wilfully committed, and if that sanction were given, there would be no end to the complications and quarrels and litigations it would occasion. But if the law were to be altered, it should be altered openly and fairly, and those who had contracted these marriages should be married again under the new law. In that case there would be an intelligible point to start from. If this retrospective action of the Bill were permitted, no one could tell what results it would bring about. No one knew what children had been born, or what rights had been acquired by others, and an immense field would be opened for litigation. He had a strong opinion on this question. He believed, in spite of all that had been said about the religious question, that marriages of affinity were forbidden in the same degree as those of consanguinity. He believed that to be the law of God, and he was sure it was the law of the land. However much one might sympathise with the children of these marriages, as born in a state of concubinage, it should be remembered that it was the fault of their parents, for there could be no doubt that they had wilfully violated the law. For his own part, he would never, either as a matter of feeling, or as a matter of duty, sanction a proceeding by which a woman would make her sister's grave a stepping-stone into her husband's bed.

Mr. BERESFORD HOPE, M.P., in the House of Commons, April 27, 1870.

Those who have looked upon the present Bill with

alarm and distress have done so not merely because of the principles which are contained within its four corners, but because of the principles which, like the oak within the acorn, are ready to germinate into active life as soon as this measure may unhappily be passed and another may be required to suit the convenience, the desires, or the passions of some other section of the community. Our marriage law of England is, as all who have looked into the matter are aware, a very simple one. It may be right or it may be wrong ; but it aims at preserving the utmost extent of liberty consistent with what it believes to be the voice of God ; while, on the other hand, it rejects, and it abhors the worldly notion of any dispensation or sliding scale based upon considerations of social expediency. It says that there shall be one law for high and low, for rich and poor ; for the Sovereign on the Throne and the beggar in the streets—one list of degrees to be permitted, one list to be prohibited—that there shall be one equal law for all. There could be no system wider than that. By the present English law, we can have no case, however rare, of any violation of this consistent and unchangeable principle by virtue of any dispensation. The hon. member for Marylebone (Mr. T. Chambers) pleads that his present Bill throws the old law into confusion only on one point. He admits that there ought, speaking generally, to be no dispensation—no difference between classes. He only strikes out of the list of prohibited degrees one isolated class and places it within the degrees in which marriages are permitted. Well and good ; but he further says—‘I propose to enact that these specific marriages shall take place only before a civil officer. I do not require that they shall be legalised by any ecclesiastical officer, or by the presence of the incumbent of the parish church ; I only propose that they shall be allowed before the registrar.’ Well, but here at once you set up two classes of marriage in the land. You break down that simplicity and uniformity of the system on which the conjugal relations have for 300 years been based. You admit the principle of dispensations into our system. What is this Bill but one gigantic recognition of dispensations, framed to admit one particular class of marriages according

to one form and in one building, while they are prohibited in another form and in another building? If once you admit the principle of classification in marriages, where are you to stop? How are you to meet those exceptions which, on various grounds of human selfishness, have been admitted in other countries? If you have one class of marriages which may be celebrated in a place of worship, and another class which must be celebrated before the registrar, you will soon have to recognise left-handed marriages and all those other Continental irregularities which, in our insular simplicity, we have hitherto avoided.

But I have to speak now to the subject-matter which my right hon. colleague has raised. The amendment invites a comparative survey of the marriage law of other countries; and on that subject I have a few facts to bring forward which will make clear to the mind of every candid man that you cannot make the change which the hon. and learned gentleman wishes without going much further and adopting other changes on which he would look with as much aversion and horror as I do—I mean such changes as the marriage of a widow with her deceased husband's brother; the marriage of an uncle with his deceased wife's niece; the marriage of an uncle with his own niece; or of a nephew with his own aunt. I say—and I challenge the hon. and learned member to disprove it—that once this present Bill shall become law the legalisation of the other marriages will only be a question of time, and of a very short time, too. I found myself in this opinion on what is called the irrefragable logic of facts—on the fact that in all the countries of civilised Europe, where marriage with a deceased wife's sister is tolerated, either absolutely or by dispensation, the other classes of marriages are also tolerated. Let us take the matter historically. Who was the first Pope who granted a dispensation for marriage with a deceased wife's sister? It was Alexander the Sixth, Roderic Borgia. This too well-known Pontiff gave such a dispensation to Emanuel, King of Portugal; and then, for the first time in the Christian world, marriages with a sister-in-law were sanctioned by the highest Christian authority. But he did one thing more—he afterwards gave a dispensation to

Ferdinand, King of Sicily, for marriage with his own aunt. That marriage also took place in the face of Christendom under the dispensation of Pope Borgia, and from that period to the present one, in Roman Catholic countries, the marriages of uncles with their nieces, and of aunts with their nephews, from time to time occur to the scandal of all pure-minded people of that communion, as well as of our own. Looking to the miserable annals of the monarchy and nobility of Spain and Portugal, which has culminated in Spain in its present state of not being able to obtain a monarch to preside over it, I believe that at the bottom of this state of things—mingled with other corruptions, no doubt—must be reckoned the unblushing practice of this class of marriages—marriages of uncles or nephews with nieces or aunts—which has openly prevailed in the royal and noble families of the two kingdoms, and has issued in producing among the nobility a weak and puny race, feeble in body and contracted in mind. We come now to France. Under the old French system, which closed with the guillotine, marriages by dispensation within the unlawful degrees went on continually increasing. Once, indeed, in 1723, the Parliament of Paris had the moral courage to quash one of these alliances, though it had been celebrated by Papal dispensation; but, still, the practice grew till it perished on the scaffold that was erected at the Revolution. Then comes the Code Napoléon. The eminent jurists who framed that code prohibited marriages between brothers and sisters-in-law, between uncle and niece, and nephew and aunt. And here let me appeal to those of my opponents who talk so much of progress and liberty to note that by the Code Napoléon these marriages were absolutely forbidden. But it is not so now; these marriages are now tolerated by the easy means of a dispensation from the head of the State. And when did that happen? At a period of French legislation which no one would call the brightest in her annals—in the early and more disturbed days of the July monarchy. On the 16th of April, 1832, a law was passed modifying the article of the Civil Code to this extent—

Nevertheless, it is allowable to the King to abrogate, for grave reasons, the prohibitions enacted in the 162nd article in respect of

marriages between brothers-in-law and sisters-in-law ; and, by the 163rd article between the uncle and the niece, the aunt and the nephew.

So was this change accomplished in that country, which is every day, by the increased facilities of locomotion, brought nearer and closer to us socially, politically, and morally, and yet it is within the last thirty-eight years that not only marriages of brothers and sisters-in-law on both sides, undistinguished in the code, have been made legal by an easy and cheap dispensation obtained from the head of the State, but also those between an uncle and niece, and between a nephew and aunt. Well, if such a state of things can, and does exist in France, is it chimerical in us to take care of the first steps, and watch where the drift of public opinion here will drive us if once we pass this measure? I come now to Germany. In Roman Catholic Germany such marriages are allowed by Papal dispensation. A newspaper, detailing the funeral of a distinguished Austrian marshal lately dead, quite accidentally told us that his wife was his niece. But I return to Protestant Germany. That is a country which is often quoted—and justly quoted—to us as a model of education and civilisation, a country which is held up to us—and I do not blame those who do so—as having given that education which we wish to give to every labouring man in the land, and as therefore being a beacon light which we were bound to follow. Take Protestant Germany—what is the state of that country as to its marriage law? Before the Commission of 1848 there came a German lawyer M. Adolphus Bach, summoned, as an expert, to give evidence as to the condition of Germany, who gave his evidence with great force and fulness, and with an evident desire to state the truth as to the marriage law in his country; but, at the same time, with an appreciation of its distastefulness to English hearers, which was a sufficient safeguard against exaggeration. M. Bach stated, that in Protestant Germany the marriage of a widower with a deceased wife's sister was permitted by dispensation from the Consistorial Court, or from some other courts acting in the name of the Sovereign, with one exception—namely, Prussia—the portion of Germany pre-eminent for its education and literary pretensions. What, then, was the state of the case with regard

to Prussia? There such marriages were allowed without any reason shown, and without the formality even of a dispensation. There was free trade in marriages open in Prussia to all—as well in those between brothers and sisters-in-law as also in those between uncles and nieces and aunts and nephews, with this one exception, that a dispensation was required where the aunt was older in years than her nephew. Ever since 1791 this absolute free trade in marriage, both as regarded consanguinity and affinity had existed in Prussia. M. Bach stated that the marriage of an aunt with her nephew was a comparatively rare thing. Well, I am not surprised at that. One question put to M. Bach was this: ‘Is the marriage of an uncle with his own niece considered incestuous?’ He replied: ‘In a great many parts of Germany it is not; in some parts it is’ Is this the assertion of a sensation writer? Is it the remark of a correspondent of a newspaper who is sent to make up a case? On the contrary, it is the truthful evidence given by a German lawyer, who knew the resentment that would be shown in his own country if he mis-stated the facts, and who also knew how unpalatable they would be in England; who had no inducement to give untrue evidence; and who gave his evidence under a manifest sense of responsibility. It is this credible witness who tells us that, in a great many parts of Germany, a marriage of an uncle with his niece is not considered incestuous. And what country is it in which this state of things is found? Is it among a people of the Latin race? Is it in Greece, or in Roman Catholic countries? Is it in a country where an inferior civilisation prevails? No; it is in Protestant Germany; in highly-educated Germany; in Saxon Protestant Germany, that the marriage of an uncle with his niece is not considered incestuous; and I ask those gentlemen who are disposed to follow the hon. and learned member for Marylebone into the lobby, whether this fact is not a test of their principles which they ought to pause on and consider? In Denmark the state of the marriage law is the same in regard to brothers and sisters-in-law, aunts and uncles, nephews and nieces. Again, there is another Protestant country most nearly related to us by common national descent, common habits, and much

that is common in feeling—I mean Holland. In Holland, by act of the Legislature, the marriage of brothers and sisters-in-law, of an uncle with his niece, and of an aunt with her nephew, are allowed under dispensation. These facts abundantly prove that over Protestant Europe, in Germany, in Holland, and in Denmark, these marriages are allowed, whether by dispensation or absolutely ; and also that in all Roman Catholic countries the marriages with brother's widow, aunt, and niece go *pari passu* with the allowance of marriage with a deceased wife's sister. What more do you want to show that these evils, which I am sure the hon. and learned gentleman deploras as much as we do, would follow upon the passing of his Bill ?

But what is the case of the prohibited degrees in England itself ? An attempt was made before the Commission of 1848 to show that marriage with a deceased wife's sister was not unpopular in England ; thus it was contended that the limited inquiry carried out by the promoters of the change exhibited 1,648 alliances of the kind as having taken place in England since the passing of Lord Lyndhurst's Act, and that, on an arithmetical calculation, it must follow that 10,000 cases were the sum total for the whole country. These statistics were, however, torn to pieces by Mr. Goulburn, who showed that, if the supposition were correct, one widower in every four who married a spinster must have married his wife's sister. Except, then, these statistics—one-half of which were thus torn to pieces, and the other half tore themselves to pieces in the impotence of the promoters to find more than forty poor men's cases out of their own boasted 1,648—there was no argument whatever for the change as a remedy needed for a practical grievance. I may state that last year I received a letter from a correspondent which informed me that in a certain well-known borough towards the eastern counties there is an individual, occupying a respectable station in life, who has married his son's widow upon the argument—who can be so good a protector of a son's children as their grandfather ? Well, but that argument, I venture to say, is just as good as four-fifths of those arguments that have been brought forward in favour of this Bill. I should rather say it is the acceptance

and continuation of the same arguments. All that we have heard about the aunt being the best protector of her sister's children is just as good, or just as worthless, as the argument in favour of the grandfather. If these marriages are right and proper in themselves, well and good—*cadit quæstio* ; but if there is something intrinsically wrong about them—and that there is felt to be something wrong all these laboured defences go to prove—then, all the sentiment we hear about making the aunt a better aunt by transforming her into a stepmother, simply falls through. Once pass this Bill, and the time and the party will soon arrive which will seek to induce Parliament to sanction other marriages on grounds just as logical, just as true, just as strong—nay, it may be stronger—than those which are now urged to sanction marriage with a deceased wife's sister. There is not one of your arguments, however eloquently urged, which is not as strong and as valid for the marriage of a deceased brother's widow as for the marriage of a deceased wife's sister. I do not apologise to this House for the length of time which I have addressed them—I do not apologise to the House for the painful topics on which I have dwelt. The arguments I used are only those of the other side turned upon those who first urged them. But I charge every one who is about to follow the learned Common Serjeant into the lobby on this division, to lay to heart that he is going into the lobby with the certainty that he is voting not only for marriage with a deceased wife's sister—you are, all of you, voting for marriage with a deceased brother's widow ; you are voting for marriage of an uncle with his niece ; you are voting for marriage of a nephew with his aunt.

The late SIR WILLIAM HEATHCOTE, BART., in the House of Commons, May 9, 1855.

There still remained the most important topic. Every speaker had admitted that if the Divine command be shown to be against the marriages proposed to be sanctioned by the present Bill, the question would be settled. In the 18th chapter of Leviticus, and in some subsequent passages,

was to be found a series of prohibitions of certain marriages, introduced and accompanied by such denunciations of the inhabitants of the countries where those marriages prevailed, and specifically on account thereof, as showed incontestably that those prohibitions were not part of their purely Jewish law, ceremonial, or municipal, of which there could have been no breach before they were promulgated, nor by nations to whom they had not been addressed ; but were a republication of God's universal moral law. The prohibitions were fifteen, of which seven were cases of consanguinity and eight of affinity. They were all alike introduced by a prohibition against the approach to any who were 'near of kin,' a phrase often repeated in the cases of consanguinity ; while to show how, and in what principle the cases of affinity were brought under the description of nearness of kin, a phrase was repeatedly applied to them which implied that there was so much of identification between husband and wife, as was indeed conveyed when they were pronounced at the creation to be 'one flesh.' It has been contended that this application of the words 'one flesh' would prove too much, and throw doubt on half the marriages in the world, by implying, that the relatives on each side were related to those on the other. But the inference was not legitimate—'one flesh' was not equivalent to one person ; nor although a man was brother to his wife's sister, could he be said to be in any sense one flesh with her, so as to carry on the chain. All that could be intended was that the husband and wife respectively, were so planted in the family of the other as that the relations of each, by consanguinity, were relations in the same degree of the other by affinity, that is to say of him or her personally, and on this principle the doctrine of affinity would be clear and intelligible. It was also clear that if the enumerated prohibitions were excepted, the cases precisely parallel, with only the sexes reversed, could not be rejected. When in consanguinity, a son was forbidden to marry his mother, it must follow that a daughter could not be married to her father ; and when, in affinity, a widow might not be married to her husband's brother, neither could a widower marry his wife's sister ; and it would be found that every prohibited

degree in our table was included in one of those classes, that is to say, either of prohibitions by name in Leviticus, or of prohibitions by necessary inferences from the cases exactly parallel. This doctrine of a necessary inference from the complete parallelism between the enumerated prohibitions, and others deduced from them, was admitted by the objection brought against us from the special provision in Deuteronomy xxv., for a brother marrying his brother's widow in certain cases. He accepted the admission of the identity of the degrees, but denied that liberty of marriage in either of those cases was sanctioned by the passage in question. The direction to contract that marriage, under certain circumstances, was exactly contemporaneous with a positive prohibition in general terms to contract any such. Therefore, the deviation was exceptional, and its precise conditions must be strictly observed. It was not of the nature of a concession or liberty, but of a positive command to perform a certain duty, addressed not to a brother only, but to the nearest kinsman, whoever he might be. It took effect not in every case of widowhood, but in those cases only which excluded the staple argument for this Bill—namely, cases in which there were no children. In no case was the marriage with the wife's sister commanded; and, lastly, the general prohibition was in a general law, of which the context showed that it was addressed to all mankind; while the special exception was in another book, having reference to the Jews alone—their rules of inheritance and their expectations of the Messiah—in connection with which last feature in the case, traces of this particular provision might be found in the Patriarchal family before the time of Moses. And when we are told that this special enactment proved that the act commanded could have in itself nothing morally wrong, it would be well for those who use the argument to consider how far, on that principle, they could maintain the unlawfulness, in itself, of homicide, which was often commanded under special circumstances, or how, in this particular matter, they could maintain any natural immorality in a marriage with a man's own sister, seeing, that in the beginning of the world the Creator so ordained things that no other marriages were possible.

There was, indeed, one difficult and much-vexed verse, which, inasmuch as it had forbidden the marriage with a wife's sister while the wife was living, was said by the supporters of this Bill to imply that such marriage was lawful after her death. But there was no process by which men could use this verse to justify marriage with a wife's sister, which would not make it equally available for the justification of polygamy. If we told a man who desired to marry his deceased wife's sister that this verse was actually in his favour because the express prohibition to contract such a marriage during the life of the first implied, by silence, the permission after her death ; how could we answer another who desired to have at the same time two wives, not being sisters, and maintained that the express prohibition against so combining two sisters implied, by silence, the permission so to combine two women not standing in that relation to each other?

He would not trouble the House at any greater length, but would only, in conclusion, entreat them to pause before they accepted this Bill. He had himself no doubt, but even if it were a case of doubt, the House would do well to reflect that where the principles of morals were involved, and awful penalties denounced, a false step was a matter of heavy responsibility ; of the weight of which he would endeavour to relieve himself by voting against the second reading of this Bill.

Marriage Law Defence Union Tracts.

No. XIII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

What the Liberals say.

THE DUKE OF ARGYLL

In the House of Lords, May 19, 1870.

I WILL not attempt a reply to the lay Lords who, in this debate, have dabbled in theology, and who, I must say, have thrown fresh light upon the necessity of scientific treatment in theological matters. I will not go into the minutiae of texts ; but I say that the law of England professes to be a Christian law ; it professes to be founded upon the laws of Christianity ; and if you can find a principle which has been acknowledged in ancient times by the Jewish Church, and by the general voice and consent of the Christian Church in later times, and if you are in search of some principle on which you are to found your legislation, surely I put it on the lowest ground when I say that it is not unreasonable that you should take that general principle, which has been sanctified by the Divine law, and which is, at least, consonant and consistent with the higher and purer principles of Christianity. Whatever cavil you may have about individual passages of that famous chapter of Leviticus—and into this subject I will not enter—I defy any man to deny that the general principle of the Jewish law was this—first, that no man should marry his near of kin, and, secondly, that the near of kin of his wife should count as near of kin to himself. That unquestionably was the general principle of the Jewish law, and I maintain that it is sanctified and raised to the higher pitch of authority

by the general precepts of Christianity. Now, when I contrast such a clear and definite law and principle, on which we may safely stand, with the language of our opponents, I am utterly at a loss to find any clear or definite principle on their side on which our law is to be based. I was rather amused to hear my noble friend who has just sat down apparently adopt the doctrine that the State is not entitled to prohibit anything not specially and in words prohibited under the Christian dispensation. If we are to go on that principle—if we are to demand chapter and verse for every prohibition—we have no right to prohibit polygamy—we have no right to prohibit or denounce slavery—or many other of the worst forms of error into which men have fallen and may hereafter fall. We must go to the general principles of Christianity ; and surely it is not too much to say we may be guided in this matter by the general assent and consent of the Christian Church ever since it was founded. I do not use that as a mere argument in debate. I am fully convinced of this truth—that if we pass this Bill we must go much further and break down the general principle of prohibitions under the table of affinity. It may be perfectly true that there are not so many cases in which men may desire to marry other relations of their wife than her sister ; but there are other cases by no means impossible, and the possibility of which it is almost disgusting to contemplate—such as marriage with the daughter of a wife by a former husband ; and precisely the same arguments of social convenience might be used in regard to such marriages as with regard to the case now before us. Who so natural a guardian to your children as their own half-sister ? Oh, but it is said there is a natural repugnance to such marriages. So there is, and God be thanked for it ! but change the law, and that feeling will be altered. When people talk of natural feelings and natural repugnancies, they speak entirely unconscious that they were built on the long habits of Christian legislation ; and I say that you

have no security whatever, when the prohibition is broken down in respect to this particular marriage, that you will not be obliged to legalise those other marriages against which, at present, you revolt. These are formidable consequences—consequences which we should face ; and I object to the suggestion that we are not to mind what might come afterwards, but should leave others to deal with cases as they arise. The Bill rests upon no principle whatever. The present law does rest upon a principle ; but when we depart from it, we can have no principle whatever except that of sweeping away all the prohibitions of affinity. Certainly the vast majority of the people of Scotland still hold this measure in abhorrence, and I join in the request and suggestion thrown out by my noble friend behind me that this matter should be considered not in parts, but as a whole ; that we shall not be invited first to give our assent to one step and then to another ; but that we shall deal with these prohibitions as a whole, and in the full light of the investigation which ought to precede such a change. If such a general change as the abandonment of the whole table of affinity were to be proposed, however, I believe that the moral feeling of the country would be revolted at many of the consequences which would ensue ; and until that inquiry has been made, and until the public feeling has been tested in such a manner, I shall, without the shadow of a doubt, say ‘Not-Content’ to the passing of this Bill.

LORD CHANCELLOR SELBORNE

In the House of Lords, March 13, 1873.

I will now, with your Lordships’ permission, say something as to the principles involved in this question. I have said that all members of society are interested in it—not only those who have married, or are likely to marry, their deceased wives’ sisters, but those who have not

done so, and are not desirous of doing so. Every married man whose wife has sisters has an interest in that condition of society which is produced by the state of the law which makes his wife's sister his sister-in-law. Our popular expression exactly hits this principle. The law makes the wife's sister his sister, and if you alter the law, the wife's sister, for domestic purposes, will be his sister no longer. Do you want prohibitory laws for any purpose of this kind, or do you not? I think you do. It is necessary and important so to fence round the sanctity of the domestic hearth upon the subject of marriage, as to make safe and secure, as far as law can do so, the unrestrained and peculiarly affectionate intercourse which ought to exist for the happiness of families between the closest and nearest relations. If the principle be a right one, of course it extends to all the immediate members of one's own family. We know that the brutal passions of some of the lowest order are capable of overleaping even the natural barriers which exist between parent and child—between brother and sister. But, as a general rule, the repugnance to such unnatural connections may be so great that they would be rare even if no prohibitory laws existed. When, however, you pass from these closest relationships, everybody feels that legal prohibitions are necessary and salutary. The moment you go a little further in the circle of relationship, the necessity for prohibitory law becomes stronger; because the more remote the connection—if it is still within the line of unrestrained domestic intimacy—the more important it is to fence it. Take the case of uncle and niece. We know that in some countries dispensations are granted for such marriages; and there, the principle of such unions being admitted, men are not restrained by natural repugnance from forming them. You want a fence in such a case, when the relation is half paternal and filial, and yet not wholly so. You want it peculiarly in all cases of affinity, for the very reason that in those cases the natural

repugnance is less strong. But the question is asked, 'Do you want the prohibition in cases of affinity at all?' Surely you do! Is not the wife to associate in your home with her sisters on the same footing as before? Is she to be a sister, or is she to be a stranger in her sister's home? Or do you wish that marriage should make a difference in the position of the wife and her sisters, when she feels that one of them may become the possible wife of her husband? So with regard to the husband's brother. Is he to be only a brother to the wife, or to be looked on as a possible husband to the wife? The truth is that the husband's and wife's relations are so united that you cannot make their intercourse really sisterly and brotherly—you cannot make it unrestrained—unless you apply the same rule to both of them. This is the principle on which the law has hitherto proceeded, and I say it is a most wise and salutary law that you should carry the fence as far in favour of the relatives of the wife as of the relatives of the husband, so that the intercourse, which is perfectly unrestrained as to the one, should be equally unrestrained as to the other. Is it possible that a husband should treat a wife's sisters as his own sisters if he were allowed to marry them? And would not children suffer as well as husbands and wives? We constantly hear the argument that wives' sisters should prove the best step-mothers the children could have. But how often, if this Bill passed, would motherless children be deprived of the care of an affectionate aunt! They need not be so deprived now, even during the widowhood of the father. Most of us know cases in which the aunt takes care of the children in their father's house without scruple or reproach. If you pass this law you will deprive them of that care in every case in which the husband is restrained from marrying his deceased wife's sister, or the sister from marrying her brother-in-law—whether by want of inclination or by religious feeling. It is impossible that a woman can occupy the position of a sister and at the same time be by law a

marriageable person. Our divorce law sets a special mark of infamy upon the case of adultery with a wife's sister. I should be sorry, whatever the marriage law prescribed, to see it otherwise. These are good, solid reasons, of a social and natural character. We have been told that this is a poor man's question and that the poor ask for this amendment of the law. My experience and information do not support this. In 1859 I received, through an eminent prelate, a number of letters, which I have in my hand, from clergymen who had laboured many years in some of the largest and poorest centres of population. Among those to whom I allude are Dr. McNeile, now Dean of Ripon, Canon Stowell, the Rev. Mr. Auriol, and the Rev. Mr. Rowsell. These clergymen stated that in their experience the poor did not generally approve these marriages, and that they prevailed less among the poor than among persons of a higher class. My noble and learned friend (Lord Hatherley), having taken great pains to ascertain the facts among the poor of Westminster, bore the same testimony. If we were to bring together all the aberrations from our law in matters relating to the connections of the sexes, we should no doubt have a very alarming and very lamentable catalogue of evils; but does anyone suppose that, by adapting our law to such a state of things, we should not produce a greater amount of mischief? For these reasons, my Lords, I earnestly entreat you not to assent to the second reading of this Bill.

LORD O'HAGAN

In the House of Lords, March 13, 1873.

The promoters of this Bill are encountered by the harmonious teaching of the Christian Church, and the unbroken tradition of the Christian people, since Christianity first rose into existence. I do not enter on the Scriptural dispute. I look to the vital principle and sure foundation of Christian

marriage, declared at the birthtime of the human race, and consecrated by the affirmation of the Redeemer, that the husband and wife are 'one flesh,' bound together in a perfect and holy union, and each absolutely belonging to the other, with a complete identity of love, hope, interest, and life. And from that conception of the marital relations has always been deduced the inference that the kinship of the wife should be held to be the kinship of the husband ; and that the wife's sister should not be the husband's wife. This principle has, unquestionably, been maintained at all times since the earliest days of Christianity. It was proclaimed in the Apostolic Constitutions before the Nicene Council. It became a part of that great system of jurisprudence which was generated when the Christian civilisation rose on the ruins of the effete and corrupt Imperialism of Rome ; basing the hope of the world on the strictness and continency of the family relations, and raising up woman from her low estate to soften and purify the rude society around her. The Theodosian Code condemned the practice which we are asked to approve, and declared marriage with a deceased wife's sister to be unlawful. And thenceforth, for many a century, down even to our own time, the doctrine of that Code has been held intact by famous theologians and solemn Councils. It was the doctrine of Basil, and Ambrose, and Augustine. It was the doctrine equally of the East and West. It was affirmed by ecclesiastical assemblages in the various countries of Christendom, and it commanded the assent of all of them. The dispensing power claimed by the Popes was at first resisted and denied, on the ground that the prohibition was absolute and mandatory by the law of God. And, when that power was at length established, it continued emphatically to witness the inherent impropriety of a practice which was permitted only in the most special circumstances for the gravest causes, and to prevent worse results. So it remains at this hour ; for although in the Roman Catholic Church dispensations are obtained,

they are got with difficulty, and because of plainly coercive exigency. This Bill has nothing to do with marriages so allowed. It gives universal licence ; and the memorial of the Catholic clergy, to which reference has been made, praying for the legalisation of such unions when authorised by special permission, in no degree involves the approval of its principle. The Greek Church, whatever may have been its shortcoming, is a venerable witness to the discipline of Christian antiquity ; and in it marriages of this sort are deemed to be incestuous, and incapable of being validated at all. If we pass from ancient times, and come down to the Protestant Confessions of later days, we find that the unlawfulness of such a marriage was asserted equally by Lutherans and Calvinists, in Scotland, in Geneva, and in France ; whilst in the Church of England it has been consistently proclaimed. Therefore, on the issue of authority, we have the testimony of the Christian world from the earliest times against this innovation ; and, for my own part, I should require the most potential reasons to overbear that testimony. But if there were no tradition, or authority, or religious influence to warrant the rejection of this Bill, I should still oppose it in the interest of society, and for the maintenance of the dignity and purity of the family life. I should oppose it because it is calculated to alter the relations of the sexes in a way most serious and most mischievous. It is said that we have no right to limit the freedom of action in matters like this, if not absolutely immoral and forbidden under any circumstances and with any sanction. But are those who argue so prepared to press their contention to its consequences ? Will they do away with all prohibitions on the score of affinity, and deny to the State the right of imposing any ? Will they refuse to the wife the privilege of marriage with the brother of her husband while he obtains licence to marry with her sister ? Will they tell those who urge that polygamy is lawful, and cite the authority of Milton to sustain their opinion, that the law must not

interfere, and passion shall have its way? They cannot, and they will not. The Legislature must have power to regulate, more or less, the conduct of the people for their moral good. Then it is said that, because so many suffer from the present restriction upon marriage, it ought to be abrogated. A bold argument, involving an evil consequence—if deliberate law-breakers are to be encouraged to trample down the restraints to which they are bound to submit, succeeding all the more by reason of the audacity of their defiance of those restraints, and of the very flagrancy and frequency of their offences. And, finally, it is said that this is a poor man's question. I doubt it much. I am assured, by those who know England well, that the persistent agitation of it, for so many years, has been maintained not by the poor but by the rich, who have an interest in it as leading to the condonation of their own illegality in the past, and not as securing a social improvement in the future. And I do not know that the poor man does not need to be guarded from what is evil—dangerous to himself, and injurious to his family—as much as the rich. In my own country, where such marriages are practically almost unknown, the poor feel no need of them, and no desire to enter into them. Ireland, I repeat, does not want this measure, and, in my opinion, should not be forced to have it. We have been, so far, I thank God, saved from the infliction of a Divorce Court such as you have in England. I do not believe that any class or denomination of Irishmen desire such a law, with its long train of temptations, evil examples, and inevitable corruptions; and yet I fear that of it this Bill, if successful, would surely be the herald. In these matters we Irishmen desire to be let alone. We have had much to endure. We have had penury and persecution; we have been cursed by intestine dissension, and disgraced by social outrage; but through all chance and change we have preserved very rich possessions in the sacredness of the Irish hearth and the purity of Irish womanhood, and from these we shall not willingly be parted.

LORD CHIEF JUSTICE COLERIDGE

In the House of Lords, June 25, 1880.

Hitherto I have been speaking of men, and of men only. But to every marriage, besides the man there is another party, and that is the woman. If the vast majority of Englishwomen in point of number, if the great majority of refined and educated Englishwomen are opposed to this measure, if it is abhorrent to their feelings, what right have we, even if we were all agreed, to overbear them and disregard their wishes? That the women of these islands in an enormous majority are opposed to it I absolutely believe. I know that amongst my own acquaintances I scarcely know one who supports it. I know that, as a rule, men most in earnest in support of the measure have admitted to me with regret that the women, as a whole, dislike it. I do not deny to Englishmen the legal power; I do deny to Englishmen the moral right to pass a law of marriage contrary to the wishes and repulsive to the feelings of the great body of their countrywomen. It is not generous; it is not manly; it is not, in my opinion, just. That there are some men who wish to contract this marriage, and some women too, of course I am not so foolish as to deny; but that the majority of those who support this measure are eagerly desiring to marry their sisters-in-law I must entirely disbelieve. It is, and always has been, the result of an agitation for which I have neither sympathy nor respect. And, further, I believe that a like case and a like agitation might be got up for legalising marriage with any other kinswoman of the wife. Certainly, for example, with the wife's niece, if the same trouble were taken and the same money spent. I could have some sympathy and some respect for an agitation which had for its object a reconsideration of the whole marriage law, which went upon some principle which distinguished, for example, broadly between consanguinity and affinity, between kinsfolk and connections. But this Bill is

II

founded on no principle ; it sets man free, but it leaves woman bound. It lets the husband marry his wife's sister, because it is said she is not his sister ; but it forbids the wife to marry her husband's brother, because he is her brother. Where is the justice—where is the common fairness of this ? Suppose it were step-children, where there is no blood in common, would anyone bear for an instant with a proposition that a man might marry his wife's daughter, but that a woman might not marry her husband's son ? My Lords, I deny that the general sentiment supports the Bill. I deny also that it is for the general good. It is not easy to overstate the benefits which the whole of society derives from the social relations at present possible between the husband and the wife, and the family of the other. Affection into which passion does not enter is the great civiliser of mankind. Passion we share with the brutes. The lowest savages equal in passion the most civilised races in the world. But impassionate affection refines and lifts up, and is the source of half the graces and more than half the beauty and delight of social life. Now, your wife's sisters are your own, and the circle of impassionate affection is largely widened. But pass this Bill and they become to you like any other women, and the circle of impassionate affection is at once contracted. My Lords, I admit that, as a rule, you should be tender to minorities. I admit that, if possible, you should indulge men's affections. But this is a case in which you cannot indulge the wishes of the minority without doing a great injustice, and inflicting a terrible hardship on the majority. Let me explain. Most men do not lose their wives, and for them this Bill has no significance. To some men there comes a time when a great shadow falls upon them, when the light of their life goes out, and hope dies within them. Some of them recover, form fresh ties, begin their lives again, and marry another woman. The majority of such men do not wish to marry their sisters-in-law, and for them, too, this Bill is of

no use, but may be most mischievous. There remain those who do not recover, and who do not desire to form new ties of marriage. To these men, and to those who do re-marry, till they re-marry, the society of a sister-in-law is perfectly unspeakable. Who can count the sum of innocent delight and comfort which this relation has given to men who most need such comfort, and at a time when they need it most? Why, for the sake of the few who do want to marry their wives' sisters, are sisters-in-law to be abolished for the vast majority of those men who do not so wish? Because you do abolish them. I said many years ago, and I venture to repeat it here because it is true, that by passing this measure you point out by statute the sister-in-law as the proper Parliamentary successor of the wife; and what modest woman will put herself in the way of a succession when most people will say that she is manifestly seeking it? Why is this hardship to be done to the great majority who are contented with the law for the sake of a very few who want to break it? My Lords, I will admit that the law of marriage having been altered in some of our colonies, and altered in the direction of this Bill, somewhat complicates the question. But, much as I regret this, and disagreeable as some of the consequences may be, I cannot admit that we are to change a law which we in these islands think for the general good, because our colonies have passed a law which we do not think wise or beneficial. I will not speak of dragging down or dragging up; but I say that if in a matter of social concern affecting the tenderest and holiest relations of life, one or the other is to give way, it ought not to be this great country, the mother of nations, the home of a domestic purity and happiness, I will not say unequalled, but I will say unsurpassed, in the whole history of the world. On these grounds I ask your Lordships to reject a measure which tampers dangerously with a most delicate, yet a most important subject, upon no fixed principle, without sufficient reasons, with aims which are not entitled

to respect and sympathy, and which I believe will lower the morality and impair the happiness of the great mass of the people.

THE LATE MR. J. A. ROEBUCK, M.P.,

In the House of Commons, May 16, 1850.

Why was the House asked to make this alteration in the law? Who called for it? What was the pressing necessity which rendered it imperative on the Legislature to change the law of marriage? Was there anybody there who would press that necessity and explain it? The fact was that certain persons had contracted marriages against the law—they had broken the law; and what was the House asked to do? Why, to alter the law in order to meet the case of those who had deliberately violated it. Mark how all the feelings which ought to govern us has been perverted and turned from their righteous purpose in order to advance this singular project. Some men, under the influence of ungovernable desire, had broken the laws of the country—others contemplated doing so. There was no mitigation in their offence, it admitted of none; there was no reason or palliation for it; and yet the men who had thus audaciously offended had the presumption to come to that House and talk about invasions of the rights of conscience. They would have the House to believe that this sister, who was so anxious to become a wife, was a person who was entitled to their sympathy, and had the strongest claim on their friendly consideration. He denied it entirely. He was of opinion that such a woman was precisely the kind of person who had less claim on the favourable consideration of that House than, perhaps, anybody else in the community. There was no sufficient cause to alter the law. Who were they who were desirous that it should not be altered? A whole nation—a large portion of the male inhabitants of this country, and, almost without an excep-

tion, the whole of its female population. Again he asked, why were they called upon to change the law? Was there any public demand for it—was there any pressing necessity which would justify the House in attempting an unexampled invasion on the present state of the law? He denied it. They who called for the innovation were persons who felt that their unlawful desires were checked and coerced by the Act at present in operation, and who longed for such a modification of the law as would enable them to gratify their unholy propensities. Those who protested against the measure were called enemies of religious freedom; but he confessed he was at a loss to understand what connection could possibly exist between religious liberty and the objection which, upon a ground of ordinary policy, he conscientiously entertained against allowing a man to marry his deceased wife's sister. He could not understand such logic; but this he saw clearly, that by the change they were about to introduce they would sow dissensions and heartburnings among many families who now lived together in amity and affection. He believed that, under the pretext of doing a benefit, they were about to inflict a serious mischief—he believed that, under the pretext of securing an effective guardianship to orphan children, they would deprive them of the tender solicitude of the most affectionate of guardians—the sister of their dead mother. They would transform her from a kind and beneficent aunt into a callous and heartless stepmother, who would look upon her own children with feelings very different from those with which she would regard the offspring of her deceased sister. They would excite conflicting feelings in bosoms which, until now, had not known a contest; and they might take his word for it, that, however well-intended their legislation might be, jealousy, dishonour, and rancour would follow in its train.

MR. FOX MAULE (AFTERWARDS LORD PANMURE)

In the House of Commons, July 4, 1849.

Mr. Fox Maule rose to propose a clause which had for its object the exemption of Scotland from the effects of this Bill. He spoke confidently in the name of the whole people of Scotland, and entreated the House to exempt Scotland from the operation of this Act. He stated here, without fear of contradiction, and in the presence of the Lord Advocate, that this Bill was abhorrent to the feelings of the people of Scotland; there was not a clergyman in Scotland connected with the Presbyterian religion who was not ready to raise his voice in opposition to this measure. He stated, without fear of contradiction, that a high legal authority had stated that the law of the land, as well as the law of the Church in Scotland, pronounced these marriages, not, as in England, merely to be voidable, but to be totally null and void. This subject had been fully discussed on its merits as an ecclesiastical question; but this he might state, that it was considered in its ecclesiastical view in Scotland, by the best authorities Scotland ever had on the subject—by those men who took part in the Reformation, and through whose instrumentality the *Confession of Faith* was originally framed. Further, after the Word of God had been reviewed and explained by the authorities of the Reformed Church, the civil authorities in Parliament simply ratified that view, not, as has been stated, as a law of the Church, but, in 1567, as the established law of the land. And, further still, by the treaty of 1689, the ratification of the *Confession of Faith* was further ratified, as part of the law of Scotland; and by the treaty of union, the Sovereign of this country was bound to maintain that law inviolate. The third clause of the Bill said that no clergyman celebrating one of these marriages should be liable to any pains and penalties of any court, civil or ecclesiastical. The result of this was that, contrary to the Act of Union,

it was a direct interference with the authorities of the Church of Scotland, and enabled a clergyman to set at defiance his vows to obey the *Confession of Faith*, and the penalties which were attached to the non-observance of those vows. He had thought that this House and this country had had a lesson by which they ought to profit, of the extreme sensitiveness of the clergy and people of Scotland as to interference with their ecclesiastical law. Whether it were right or wrong, he belonged to a body who, thinking that Parliament had interfered with the ecclesiastical law as settled in the *Confession of Faith*, and ratified by the Act of Union, to the number of upwards of 400 clergymen, and 700,000 or 800,000 persons, had seceded from the Establishment, and given it a blow from which it would never recover. Let them beware how they again started the same elements of discord. Let them beware how they put it in the power of any clergyman to set at naught his vow to obey the *Confession of Faith*. If they did this, the consequences would be not only further disruption in the Established Church, but it would be the utter annihilation of the Established Church in Scotland altogether ; and he confessed he did not want to see that. He therefore called upon the House not to take the step of extending this Bill to Scotland : first, because these marriages rarely take place in Scotland ; secondly, on the ground that the idea of these marriages is abhorrent to the people of Scotland ; further, that they were making an unnecessary and rash attack on ecclesiastical authority in Scotland ; and, lastly, that they were introducing a practice of marriage which had never had ground there. In every instance where these marriages had taken place, so offensive was it to the neighbouring people that the parties had been obliged to quit the neighbourhood.

THE LATE BISHOP OF NORWICH (STANLEY)

In the House of Lords, Feb. 25, 1851.

Setting aside, then, this class of objections (those founded on Holy Scripture), I do see others, and very grave ones, which will, I trust, induce your Lordships to reject the Bill. We should recollect that we are not now, for the first time, called on to legislate respecting such marriages. Were it so, it might be fairly questioned whether we should legislate at all. Not legislating, then, would imply that the Legislature did not consider legal interference suitable to the case, and declined expressing any judgment on it. But, after so many years of stringent legislation, after habituating the nation at large to look on these marriages with reprobation and abhorrence, to rescind the law—not merely to modify but to reverse previous legislation—this would have the effect of giving a positive and august sanction to these marriages. And mark the operation of a measure so understood. I am desirous of speaking with great respect (for I really entertain it) of the religious and moral character of those who are urging on this measure; but I am still bound to say that it is a measure which would offend and shock the sacred feelings of nearly the whole of what is called the religious world. My lords, you should pause before you venture to do this; and especially when you reflect, that previous legislation has tended, and was designed to create, and foster, and confirm the feelings which are now arrayed against a reversal of the law. And on what ground would you be doing this? Because certain individuals complain that the existing statute presses upon them severely and injuriously. For every one to whom this measure could bring relief, a thousand would be injured by the shock which it would give to their most sacred notions and impressions.

But there is one point of view in which the objectionable character of the Bill presents itself to my mind more strongly and cogently yet. I do feel that we here are hardly competent judges of the question. It is essentially a woman's question. If we ask what portion of the community will be most deeply affected by our decision this night, and are most anxiously and tremblingly awaiting that decision, it is the women of England. And ninety-nine out of every hundred of them are not only opposed to the Bill, but regard the possibility of its success with disgust and dismay. They tell us—and on such a subject we are bound to listen to them—that if the existing law is repealed, according to the tone of opinion and feeling which prevails among them, and exercises a paramount influence over them, all that free, familiar brotherly and sisterly intercourse between the husband and the wife's sister—all the happiness which results from it—is at an end. They tell us that when death removes the married sister, the unmarried sister cannot, as now, make the bereaved home hers, and take charge of the motherless children. They implore you not to take a step which will disturb some of the happiest relations of domestic life, to an extent which you may not be able to comprehend. Some of your lordships may ridicule this scrupulous sensitiveness—may call it fastidious, mawkish ; but, think of it as we may, we are bound to deal with it as an important fact. And whatever may be our estimate of feelings such as these, we should not forget that they form part of that fine tissue of moral sensibilities which make the English female character what it is, and render the homes of England the abodes of a moral purity, and a domestic sanctity, which are amongst the choicest blessings for which we ought to be thankful to God. I, my Lords, will be no party to a measure which is to distress and outrage feelings which exercise so blessed an influence on the happiness and well-being of English society.

THE RIGHT HON. W. E. GLADSTONE

In the House of Commons, May 9, 1855.

I confess that it causes me little less than astonishment to find hon. gentlemen say that they have opened the Bible and read the 18th chapter of Leviticus, not that they have read the entire chapter, but carefully read and considered the 18th verse, and on the basis of that extended study, not reaching beyond the translation placed in their hands, and therefore in which they are entirely at the mercy of the translators, and consequently at the mercy of authorities, they assert that they have arrived at a state of comfortable conviction that the verse in question does not prohibit, but rather seems by implication to permit, marriage with a deceased wife's sister. I hope it is not necessary to mention to the House that it is not on the 18th verse of the 18th chapter of Leviticus that any argument can be founded. I warn those who use that verse, believing that it gives sanction to these marriages, that in quoting that passage they will find themselves bound and nailed to sanction polygamy. It is not possible for any man to draw a conclusion in favour of marriage with a deceased wife's sister without being open to reply that it precisely, and to the same extent justifies, polygamy, with the exception of the case of marrying the wife's sister. But the case of the 18th verse of the 18th chapter of Leviticus is clear. It does not rest on mere inference or analogy.

It is a universal prohibition, contained in an early verse of the chapter, which forbids marriage with those who are near of kin, and the only question we are entitled to raise is, What is the meaning of the words 'near of kin'? Where are you to seek for their meaning? In the chapter itself; and I defy any man to give them a construction which does not make the case of marriage

with a wife's sister come within the scope of the prohibition 'near of kin.' Nothing can be more conclusive to my mind than that the interpretation of the Bible in this matter cannot be fairly questioned. When we are told it is a matter of doubt, it appears to me to be so only in the sense that everything is a matter of doubt to those who may have an interest in disputing it, or who may desire to do so. Any man has a right to say, 'It is a matter of doubt, because I doubt ; and as I doubt it I am entitled to call it a doubtful matter' ; even the great principles of Christianity embodied in the common law are principles which may be called in question by the licentiousness of individual minds. Private opinion may question the authority of the universal voice of Christendom on this matter, but it will question it exactly on the same grounds that it may question the whole results that Christianity has brought to mankind, and everything that Christianity has elevated out of the region of private opinion, and made part of the common property and intelligence of mankind. There is a demand which I feel authorised to make on all who are prepared to vote for this Bill. They speak of the expediency of altering the law, of the advantages that will attend the contraction of these marriages, and they contest the construction of the Divine law on principles which would make everything doubtful ; but there is one thing which not a man among them has attempted to do, and that is, to state a clear, definite, and intelligible principle on which they proceed—a principle from which we may be able to know, not why they ask for this Bill—for we know that they do so because some persons are galled by the present state of the law—but how, when that which is now asked for is granted, are we to stand with regard to that which remains ? At present we have a law which goes up to a certain point, and stops ; the prohibitions of which are intelligible ; affinity is considered the same as consanguinity for the purpose of these prohibitions, which are carried up to the third degree ; we have an

answer to those who complain of these prohibitions, by showing that the rule proceeds on general grounds, and is uniform in its application. But what does the hon. member now propose? He makes an arbitrary selection of two out of thirty cases, and leaves them—having satisfied for the moment the appetite for change—until he finds it convenient to return to the charge. Is there anything in these two cases which will leave the remaining twenty-eight safe? We are entitled to know something on the subject, for this Bill affects our social arrangements, and the best social result of Christianity is the perfect equality of man and woman as to the facility of contracting marriage. This Bill meddles for the first time with that equality. The hon. member proposes to authorise the marriage of a man with his deceased wife's sister, and therefore with his wife's niece; he legislates for the man, but he does not propose, on the other hand, that the aunt may marry her husband's nephews. Is this a small change? When was woman first elevated to an equality with her stronger companion? Never till the Gospel came into the world. It was the slow but certain, and, I thank God, hitherto unshaken result of Christianity, not considered as a system of dogmas, but as one of social influence, to establish a perfect equality between man and woman as far as the marriage tie is concerned. The hon. member now proposes to change this fundamental law and principle, and I have a right to ask him how far he intends to proceed, and whether he intends to have one marriage code for men and another for women. He proposes to legalise marriage with a wife's sister, which is in the second degree, but still leaves in full operation the prohibitions in the third degree; but on what principle, I ask, are you to prohibit those who stand in the third degree of affinity from marrying, after having legalised a marriage in the second degree? The hon. member for Kidderminster has an answer for this, which, I think, involves him in still greater difficulties; for

he did not scruple to say that he draws a distinction between affinity and consanguinity, and that if it were needed he was ready to throw over affinity altogether. Sometimes, hon. gentlemen tell us that they consider affinity one thing and consanguinity another, but this points to a vague succession of indeterminate changes dependent on nothing but agitation, and I will not say passion, but licence of opinion, which threatens to subvert the system of restraint in marriages—which I have stated to be the result of the proclamation of the Gospel among men. The hon. member for Kidderminster speaks of the collective conscience of mankind—I interpret him in the best sense, though I think that he meant the conscience of each individual—and he maintains that this would be a proper and sufficient guide from age to age for the course of legislation on this subject. But, are we who have realised the results of Christianity to go back from Christianity to conscience? This, which is sometimes called the light of conscience, sometimes the light of nature, and which in no two ages or centuries has ever been alike, has been of gradual growth and training from the infancy of mankind, until it has reached the highest level on which Christianity has been placed ; and, if we are to go back from that level, I ask, where are we to stop? And I say that, while I have a superior, I should not be content to adopt an inferior standard. The law of the land, not in an arbitrary manner, but on principles based on divine revelation, has adopted our present prohibitions in marriage ; and I oppose the present measure because I see that it is part of a system which I do not say is intended to be so, but which in its working is certain to be most pernicious to those results which the Christian religion has wrought out for mankind.

THE LATE RIGHT HON. LALOR SHEIL.

I shall apply myself exclusively to the moral and domestic results of the proposed measure, and inquire what 'will be its effects' upon the wife, the husband, and the prospective bride, whose pathway to the altar is to cross her sister's grave. An amiable woman now receives her unmarried sister with open arms ; she cherishes her with a truthful and trustful love ; she watches over her well-being with the solicitude of an almost maternal care ; no injurious suspicion can come near her ; and, although her sister should pass hours and days in her husband's company, upon her deep and still affection no dark conjecture is allowed to cast a shade. But if this Bill should pass, if the wife be taught to regard the daughter of her father and of her mother as the heiress to her bed, and as having, peradventure, an illegitimate pre-occupation of her husband's heart, her feelings would undergo an inevitable alteration ; the worst of all the domestic fiends will enter into her soul, and possess itself of all her being ; trifles 'light as air' will be invested with their proverbial confirmation ; the most harmless familiarities will be misconstrued ; she will detect a glance in every look, and a pressure in every touch ; her fancy will be stained with images of sin, and in those hours of ailment, to which almost every woman is condemned, she will be pursued and haunted by many dark and distracting surmises.

I turn to the husband. He now looks upon his wife's sister as his own ; he feels for her no other than the fraternal sentiment ; his intercourse with her is unsullied by a wish ; but if he shall be taught to regard as an object of future possession the woman to whom he will be placed in perilous proximity, phantasms, which ought to be chased away, will crowd upon him, and a change of moral temperature will never fail to follow.

But upon the wife's sister what sort of interest will be produced by this measure? She now regards her sister's husband as her protector and her friend; into her unimpassioned gratitude no under admixture of tenderness is infused; but if she shall have a contingent, or rather a vested, remainder in the pillow on which her sister's cheek may soon be coldly and lifelessly laid—if she shall be taught to associate her wedding garment with her sister's shroud—I am afraid that the spirit of conjugal enterprise will be awakened; she will have recourse to all the expedients of captivation—all that she says, and looks, or does—all her gestures, her attitudes, and her intimations will be swayed in her intercourse with her sister's husband, by that spirit of speculative endearment which women can so readily and almost instinctively assume. These considerations induce me to think that this measure is unadvisable. If my right hon. and learned friend the member for Bath shall succeed in this project, where is he to stop? At which of the prohibited degrees is he to pause? Why may not a man marry his wife's daughter, as well as his wife's sister; for in neither case is the barrier of consanguinity interposed? There, however, it may be said, that Leviticus intervenes. I might quote some of the authorities of the Established Church, Bishop Jewell for example, to show that the inference from Leviticus is irresistible; but I shall adhere to my resolution not to enter into the dogmatical part of the question; at the same time it is to try no means inconsistent with that resolution to state what I consider to be an indisputable fact, that the religious feelings of the country are against this measure. The women of England, who are the best judges upon a question with which their domestic happiness is so much concerned—the wives and daughters of Dissenters are opposed to it; the vast majority of the clergy, having a natural regard to the indisputable doctrine of the Church, are against it; the whole Scotch nation are averse to it; and the right hon. gentleman the Lord Advocate declared in

his evidence that a marriage with a wife's sister was abhorrent to the feelings of the Scotch people. Ireland regards it with a sentiment stronger than one of mere aversion ; and the Catholic priesthood deprecate the law that should include these marriages within that dispensing power from the exercise of which the public sentiment would recoil. No amount of popular prejudice or passion would induce me to do an injustice to any man or to any class of men. Rather than do the slightest wrong, I should hold the religious feelings of the whole country in disregard ; but I would not, on the other hand, wantonly and gratuitously run counter to that feeling, for the sake of a more than hazardous innovation, which breaks down the moral fences that protect your homes.

THE LATE LORD-CHANCELLOR HATHERLEY

In the House of Lords, May 19, 1870.

Without fear of the retort which I may expect from the noble lord who opened the debate, I say I am one of those whom it is hopeless to attempt to convince—one of those having a religious view, whom the noble lord said he could not expect to shake. I do not disavow the impression on my own mind—but I do not therefore feel incapacitated from arguing this as a question affecting the welfare of the country and the happiness of all parties concerned, including, I say, most especially those unhappy women who, in a manner which I can hardly characterise with indignation adequate to my feelings, have been betrayed into placing themselves in a position in which men ought never to have placed them. Taking the line I have always done in political matters, I proceed to explain why I advocate the rejection of this measure. We have been told that the relief proposed by this Bill is a real and serious want of the

poor. Of all the hypocrisy I have ever heard on this subject there is nothing so monstrous as that this is a poor man's question. I know something about the poor, and I am confident they will be the class least affected by the Bill. The poor marry early, and it is very seldom among the poor that the widower finds the sister of his wife unmarried. I am told that in the northern manufacturing districts, owing to accidents and the unhealthiness of employment, husbands die more rapidly than in the agricultural or ordinary town districts ; and it may happen in these manufacturing districts in one case in a hundred that the wife may die while a sister is unmarried. But it is interesting to get at facts. Everybody has a right to make philanthropic statements, and no one likes to be cross-examined upon such statements. The first time I opposed this Bill 'elsewhere,' a clergyman wrote to me saying that—'Ycu have ventured to say that the poor do not desire this Bill. I know twenty or thirty cases in which the widowers were ready to marry their deceased wives' sisters.' I replied that I would recant all I had said if he would state, on his own authority, that he was prepared to furnish names and addresses so that I might inquire into the facts. I never heard anything more from him. I now come to the reports got up—I can use no other expression—by the persons who favour these marriages. A Royal Commission was appointed, which took the information presented to them ; but, of course, had not the means of seeking out for information on the other side, while two able solicitors were regularly retained, and furnished information which supported their view in an elaborate form. In this way we got the numbers—1,608 of these marriages among the rich, and 40 among the poor—a proportion of 160 to 4, or 1 in 40. I believe that is something near the proportion among these classes ; for I myself, several years ago, took some little pains to inquire in my own neighbourhood, in two parishes containing 60,000 people and 40,000 poor, and, after employing a

very active person to search, I could only hear of one such marriage. However, one of the newspapers, which objected very strongly to my view, said that a City missionary, who had made inquiry in the same district, had found two more. So, after scouring the whole field, we found three such marriages among 40,000 poor. And now a word or two about this society. There were two or three very wealthy men who got themselves into this scrape, and they formed what was called 'a Committee' for improving the Marriage Law. That Committee has existed for 24 or 25 years. Rather late in the day—I think after the last time this Bill was thrown out by a narrow majority—we thought it time to see whether we could not diffuse some information on the other side. We got hold of the publications of this body. They were always anonymous, and still are ; but we put out our names—some 80 of them, and among them was the right rev. prelate the Bishop of St. David's, who has been quoted this evening as being opposed to the Scriptural prohibition of these marriages. No doubt, the quotation by the right rev. prelate (the Bishop of Ripon) was a perfectly accurate one ; but the fact remains that the Bishop of St. David's, taking the ground of social expediency, actively opposed this measure. My Lords, we found a systematic misrepresentation of the law by this society, which declared that these marriages were lawful in 1835, when Lord Lyndhurst's Bill was introduced, at the instance of some noble lord—that was the form in which it was generally put—and then they were for the first time made illegal. Now, this was a gross misrepresentation. From the year 600 to the present time there has never been a period in the law of England in which it was more lawful to marry a wife's sister than a man's own sister or mother. These are not my words ; they are the words of Lord Wensleydale in giving the decision of this House in a well-known case. The society, however, has large funds, and has been very active. As the noble Duke (the Duke of

Marlborough) has said—with regard to degrees of consanguinity and affinity it is obvious that you must draw the line somewhere ; and why should we disturb the line which has been laid down for 1,200 years? It is obvious that there is great danger in disturbing the existing restrictions, unless we are prepared to substitute something better in their place ; but this Bill would unsettle everything and settle nothing, and it would not give satisfaction to the poor, but only to a comparatively small number of rich persons, who have entered into these engagements with their eyes open, by the advice of an anonymous society which has thought proper to mislead them. At any rate, if the question is to be opened, let it be done thoroughly, so that we may arrive at a settlement upon it that will be likely to last for a century at least. The passage of the present Bill will not effect such a settlement.

THE RIGHT HON. LORD CHIEF JUSTICE
CAMPBELL

In the House of Lords, Feb. 25, 1851.

With regard to these marriages, which he (Lord Campbell) called incestuous, he had been assured in the most positive manner by those who had the best means of information, that they were not more numerous than instances of bigamy, an offence which he knew from experience, both as counsel and judge, was exceedingly common in every county in England. Not an assize was held scarcely without there being a trial for bigamy. It might, with as much reason, be contended that this was a ground for making polygamy legal—that all that had been done to bind one man to one woman was ineffectual, contrary to the propensities of mankind, and, therefore, that polygamy should be legalised.

To be had at the Offices of the Union, or of E. W. ALLEN, 4 Ave Maria Lane, E.C.

Marriage Law Defence Union Tracts.

No. XIV.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

What Miss Lydia Becker says.

TO THE EDITOR OF THE 'MANCHESTER GUARDIAN.'

SIR,

I am reluctantly compelled to ask for a little space in order to notice the very extraordinary letter from Mr. Paynter Allen which appears in your paper of this day. Although I have a strong opinion on the question of altering the law relating to marriages of affinity, I have taken no active part in the discussion, and when I have alluded incidentally to the Deceased Wife's Sister Bill in my speeches respecting the franchise for women, I have felt constrained to observe neutrality on the main question, and to confine myself to pointing out the inequality of the proposed Bill as between husbands and wives, and the injustice, as I consider it, of making a change in the law so vitally affecting women while they are deprived of the constitutional means of making their wishes and opinions on the subject felt by the Legislature.

It would not have been right for me to make use of the platform provided by the Suffrage Society for the promulgation of my personal opinions on the subject of marriage with a deceased wife's sister, or for the purpose of offering any objection to the Bill on general grounds. It is probably this necessary reticence which has created in Mr. Allen's mind the extraordinary misconception of my opinions which his letter displays.

Mr. Allen asks how I can see "lurking in the measure for legalising marriage with a deceased wife's sister " a new inequality between the sexes and a new degradation of women. First, as to inequality. The Bill proposes to render legal marriages, whether past or future, between a man and the sister of his deceased wife, and to leave illegal marriages, past and future, between a woman and her deceased husband's brother. This creates an inequality where before was equality. The inequality will be felt injuriously in the relations of husbands and wives to their sisters-in-law. Wives' sisters are as a rule more intimate and frequent in their intercourse in their married sisters' homes than husbands' brothers are in their married brothers' houses. Husbands naturally desire that when their brothers are admitted to the family hearth, their

wives should be invested with the sanctity of the sisterly relation towards those brothers. They, therefore, in the proposed legislation carefully respect what Mr. Paynter Allen calls the "prejudice" against marriage with a brother's widow. But when it is pleaded that the same sanctity of sisterhood should be left to protect the yet more familiar and intimate intercourse of the wife's sister in her sister's home, the plea is set at naught, and the very men who maintain the sanctity of the sisterly relation in the one case seek to destroy it in the other. On this ground I allege that the proposed Bill is unequal as between husbands and wives, to the advantage of husbands.

But Mr. Allen, though he admits the inequality, which he defends on Scriptural grounds, invites me to welcome his proposed "reform" "at least as an instalment of justice," and kindly informs me that my proper course is to endeavour to correct the prevailing notions respecting Leviticus, and "to remove the prejudice—which, irrational as it may seem to Miss Becker, is shared at least as much by women as by men—against brother's widow marriages, and then when she has a large force of public opinion at her back to bring her grievance before Parliament!" Now I can only characterise this statement as a most

astounding misconception of my position. I have no "grievance" against the existing law ; my grievance, if any, is against those who are trying to overthrow it. Far from thinking the prejudice against marriages within the family circle "irrational," I hold that the dislike to such marriages, which I am happy to believe is entertained by a large proportion, if not by the majority of the people of England, is both rational and moral, and I hope it will long continue to exist.

Mr. Allen asks, secondly, why I think that the relaxation of the law relating to marriages of affinity would tend to degrade women ? To answer that question fairly would occupy more space than you might be willing to afford, and take more time than I have to bestow just now. Briefly, I may say that it tends towards a reversion to the Oriental idea which would limit the relation of women to men to the marriageable relation, and is based on the notion that a woman cannot continue to hold a true sisterly relation to a man who, during her sister's lifetime, had been as a brother to her.

Yours, &c.,

LYDIA E. BECKER.

Manchester, Feb. 1, 1883.

To be had at the Offices of the Union, or of E. W. ALLEN, 4 Ave Maria Lane, E.C.

Marriage Law Defence Union Tracts.

No. XV.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

A Woman's Opinion on the Wife's Sister Bill.

I AM an elderly woman ; my husband is ten years older than myself. Though I have been acquainted with such cases, I possess no friends who have wished to unite themselves with their deceased wife's sister, or with their brother-in-law. I therefore consider myself as entirely unprejudiced and able to form an opinion with regard to the proposed change in the marriage law.

And *first*, I would wish to be permitted to answer some of the assertions alleged in favour of such proposals. It is said that these marriages, even marriages between uncles and aunts, are permitted on the Continent, and do no harm. To this I may reply, that I lived abroad, chiefly amongst foreigners, for two years of my youth, and I shall not easily forget the impression made on me by the atmosphere of distrust, the petty jealousies and scandals, the suspicions and gossip with regard to the supposed amours of married men, which tainted the customary conversation of the indi-

viduals, young as well as old, who composed what is called the polite society of the country in which I was residing. At home we may have much to amend, but few will deny that our standard of purity and morality is comparatively far higher than on the Continent.

Secondly, It is alleged that because most of our colonies have legalised these marriages it is incumbent on us also to sanction their legality. Because our colonies have done a short-sighted foolish thing (in Canada the Act was only passed last year, and none of our colonies have had time for full experience of its evils), why should we do likewise? Because children commit silly actions, is it necessary for their parents to follow suit?

Thirdly, With regard to the alleged injury done to the innocent children of such marriages, I would observe that when a man and woman choose to live together without being married, their children are necessarily illegitimate, must inherit the shame, and cannot succeed to entailed property. That is no more than an example of the old law that the sins of the parents are visited on the children.

Fourthly, It is said our existing law presses hardly on colonists who have contracted such marriages abroad and wish to revisit England. They have but one alternative: let them remain in the countries where such unions are possible, and forego the advantages of the old country,

which of necessity their presence would scandalise. We need not alter our laws to suit the morals of other lands.

Fifthly, Some say that this new Act would benefit the poorer classes, because, forsooth, in any case they are apt to think marriage unnecessary. Then why alter the marriage law for them? It seems a strange idea that its advocates should deem the rite alone or more particularly necessary for the purpose of consecrating the union with a deceased wife's sister. I believe the real fact to be that the clergy are more against the proposed change in the interests of the poorer classes than in those of any other.

But one cannot shut one's eyes to the certainty that this law, if passed, would have the effect of breaking up family life in the middle and upper classes of our country. With thousands upon thousands of true-hearted British girls, indeed, its only effect would be a vexatious interference with their liberty, debarring them in future from considering their brother-in-law's house as their occasional if not only home, and forcing those who already minister to their sister's motherless children to relinquish that charge. But there are deeper and darker things to be considered.

Let me ask, Are the morals of the young men and women of our society so progressively improving as to make it advisable to remove any of the ancient safeguards? As the law *is*, a girl, though prone to love of admiration, would hardly think it worth her while to lavish her attentions on

her brother-in-law, however sickly and ailing and hopelessly invalided his wife, her elder sister, may be. But wait till the law is altered, and marriage after that sister's death possible. Then you would see how the gay, healthy, perhaps handsome younger sister's love of influence (a vice which, with the consciousness of power, is increasing in young women every year) would work upon the man, often sorely tried and much to be pitied, and the horrid scene would be enacted of a girl, perhaps brought up from infancy by the very woman she is injuring, endeavouring to supplant her own sister before that sister's very eyes, and, it may be, years before the breath is finally out of her body. For of one thing I am persuaded, that in the event of the long illness of the first sister, the love of the man for the second sister, were she to minister to the sick woman, and be consequently daily and hourly in his society, would, if excited at all, be invariably excited long before the closing scene took place. The marriage would be only the consummation of what would have been going on for months, possibly years before. Who has lived long and has not known of such cases with young governesses? I can only say I have been cognisant of more than one myself. In each instance—the governess engaged perhaps rashly by the wife before her illness commenced—the latter had not sufficient discrimination to make a change in her schoolroom when her own usefulness and attractions were failing and those of the governess becoming daily more obvious. I grant you that

infant children, in the event of their mother's death, would at the first moment take more kindly to their aunt, whose voice and manner might probably remind them of that mother ; but were the children a very little older they would be as likely to know too much of their aunt to wish to have her for their stepmother in any case ; and should these children look back, as children growi g towards maturity often do look back, yes, and understand too, things incomprehensible to them in childhood, and should that retrospect remind them of words and looks, revealing to them, as with a flash, treachery towards their mother, I believe the hatred to any stepmother, however indifferent or cruel, would be as love compared to the loathing they would feel to their quondam aunt, their mother's betrayer and supplanter.

Again, people say that these marriages would scarcely ever take place. If so, why, for the gratification of an infinitesimal few, should you outrage the many by altering the law ?

Others prophesy that the love of the man, if offered, would be rarely returned by the woman, and that the sister-in-law would never think of marrying her brother-in-law, even in the case of her trying to attract him. Probably she would not often do so ; but the feeling would be woke up in the man, and would his wife be necessarily blind ? I believe if any circumstance would induce a woman in the frenzy of despair to make away with herself and her offspring, it would be suspicion of the sister whom she foresees will

succeed her—nay, who has already succeeded her—in the affections of her husband, and who, she believes, will ere long be endowed with the charge of training the morals and the hearts of her innocent children.

But in many cases the attraction between the husband and his sister-in-law would commence quite involuntarily, though it would require more than ordinary principle to guard against its growth. Who has not felt for the husband of a sickly, diseased, perhaps paralysed wife, despoiled of all attraction and usefulness, a wife and yet no wife, alive, and that is all—no, not all, for she still feels, and the love and pity of him to whom she had once hoped to be a true helpmate and blessing 'till death does them part,' for whom, and in whose children's care and service perhaps, she has worn patiently out her poor frail strength, is still to her the one sweet drop in her cup of suffering? Would you deprive her of this solace? Would you, by some wretched, though perhaps warranted, suspicion, force her to drink it in all its bitterness, even to the very dregs?

But one compassionates the man, worried, helpless, and comfortless. Why, then, should you throw a temptation to evil in his path which has hitherto been no temptation? Why should you make it impossible for his sister-in-law to remain under his roof to be a help and comfort to himself, to be a nurse and blessing to his wife, to assist both husband and wife in bearing the burden of their mutually clouded existence?

All these questions will not occur to those who are not old enough to have experience of life as it is.

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For young girls it is not a proper subject for reflection at all. And how can the young wife understand it, strong in the consciousness of her own attractions, and in the power she possesses over the affections of her husband? But let her wait a few years and keep her eyes open, and she will see.

I would fain believe that men do not apprehend what would be the consequences to many women of the change they contemplate. The natural indisposition of women to speak out on so disagreeable a subject has helped to mislead them. Also it is difficult for a man to put himself in the position of his wife. When a woman marries she practically gives up self. Her husband and children are her all ; her self is as nothing. Her home is her life, her world. In how many cases she then renounces pleasure, friends, health. But she looks for a recompense, and that recompense is the secure love of her husband, and through all trials the consciousness of unquestioning faith in him. Conjointly with him she is the centre of her family. If she is dethroned from that place she is nothing. But should she have reasonable grounds for suspicion and jealousy, she has not sinned. In her case suspicion and jealousy are righteous. And who dare say that if this Act is passed they will not frequently be justified?

Will it be a manly act to frame a law which will infallibly, in a multitude of cases, instil reasonable suspicion and righteous anger into the woman's heart who, whatever her shortcomings, has given herself for better and for worse to

her husband, and who with him, and for his sake, has borne the burden and the heat of the day?

Will it be chivalrous, after perhaps years of companionship, to run even the risk of troubling her peace, unless, indeed, she has early possessed the foresight of shutting her door against her younger sister?

With the vast majority of all thinking women opposed to this Act, will it be generous, will it be just, in men to give them this slap in the face which its passing into law is certain to inflict on those of their class who *least* deserve it?

For all these reasons I have no hesitation in my belief that the contemplated new Marriage Act is a grave mistake, and will not be for the advantage of family life.

December 1, 1882.

Marriage Law Defence Union Tracts.

No. XVIII.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

A Lady's Letter to a Friend on the Threatened Change in the Marriage Law.

MY DEAR S——,—When we exchanged a few words the other day on the subject of marriage between a brother and sister-in-law, I was surprised to find that you had hardly ever given the subject serious consideration. It is often said to be especially a woman's question, but in any case it must be admitted to be one of great importance. As you cannot be a solitary instance, but there must be others who, in spite of the long period that the subject has been before the public, have not yet made up their minds upon it, I should be glad to put before such as I can reach a few considerations which weigh very strongly with myself. I do not wish to discuss the whole matter at length. The promoters of the change have stated their case often enough, and their arguments have been, to my thinking, ably and unanswerably refuted over and over again. I wish to quote no authorities on either side, not that I expect to say anything new or original, anything that has not been said, probably better said, before ; but I think my letter will be the plainer and simpler for not being embarrassed by an immediate consciousness of what other people have urged.

We may waive the vexed question from Leviticus, only remarking, in passing, that the general drift of the old law on the matter appears plain, viz., that relations of affinity were to be put on the same footing as blood relations ; else why (to give one instance only) the emphatic 'She is thine aunt,' attached to the prohibition to marry an uncle's wife? But grant for a moment that there were a special exception in the case of a sister (which I do *not* grant), do Christian people seriously wish to assimilate their marriage regulations to those which were permitted among the Jews 'for the hardness of their hearts'? I commend the question to those who know their Old Testament, and pass on.

My own profound dislike to the idea of this change, and the dislike of the generality of educated women who have really given attention to the subject, is based on the sense of the losses and restrictions it would bring into family and social life, even among those who are *personally* uninterested in it. I do not write *against* those who wish to marry their brothers or sisters-in-law, but *for* those who *do not*, and who yet, in the younger generations especially, will be indirectly affected by it.

But I shall probably be met on the threshold with the old objection, 'You are thinking only of your own class ; but this is a poor man's question, and it is for the poor, as the majority, that our legislators must decide.' Therefore a word in passing on this matter. To say that this measure would be good for *the poor* is a begging of the question ; for *if* it is not good in itself, it cannot in the long run be good for *them*. What right have we to separate ourselves from our brethren, and say, 'Though this may not be the most desirable thing in itself, it will suit *you*.' If we see a higher morality, or even a higher social state, let us, in God's name, lift them up to it if we can, and not lower our standard to the level of an existing evil. If there is nothing against these marriages but an *arbitrary law*, let us do away with the law ; but if the law itself (so long familiar to us in the 'Table of kindred and affinity' in our prayer books and our churches) is the result of a *deep instinct*, let us remember that by doing away with the law we do not make that right which was wrong, nor that desirable which was questionable.

I believe the argument about the poor man's interests really means *this*. A man loses his wife ; he calls in her sister to care for his house and his children ; he makes her his mistress, and then it is suggested that he should have the power of righting the wrong, as far as possible, by marrying her. But is family and social life to be shaken to its base for the sake of the man who could not be faithful to his dead wife for the few months necessary to make a re-marriage customary and proper? We will hope there are not many such men even among the very 'poor' !

The arguments *pro* on this part of the question would seem to me marvellously puzzle-headed if they did not rather seem so wonderfully insincere ! Of course I do not mean that all who use them are insincere ; yet I cannot but think that *some* of the advocates of the measure are guilty of a *wilful* confusion of thought upon the subject, hoping to snatch a suffrage now on this side, now on that. *How is it*, let me ask, that a man has hitherto been able to call in his

wife's sister with the same comfort and freedom with which he would call in his own? Simply because, hitherto, law, custom, and instinct have put them on the same level, and assumed that they would be treated with the same brotherly respect. *The sister-in-law has come to the widower under the protection of her sisterhood, and that protection consists in her being, to him, unmarried.* If her sisterhood is abolished, she can come to him with just the same propriety or impropriety (let society decide *which*) as that with which any other young woman can come and live with any young unmarried man. Let her be either his sister or not. But it can hardly be reasonably claimed, even on behalf of the 'poor' man, that he should first be allowed to call in a certain person as *a sister*, and then to marry her *as no sister*. But, as I apprehend it, this is virtually what is asked.

With the other common arguments I will meddle little. Those who assume that an aunt must necessarily make the best step-mother, are assuming a great deal. If she have children of her own, she will probably be exactly on the level of other step-mothers; and it might easily happen that the children find they have acquired an average step-mother and lost a good aunt. Again, those who allege the use of these marriages among continental nations, will not find the plea has much weight with us unless they can show that family life is the happier, holier, and better in consequence. This is a point on which I am not competent to speak; but if what I have read of Protestant Germany be true, the less our feelings about the nature of the marriage-tie are assimilated to theirs, the better for us.

The only point on which I wish to enlarge is what I may call the social one, not because it is the most serious, but because it is one of which all can judge, and on which the arguments against the change are, I think, least open to dispute.

I come back to what seems to me the good of our own class, believing that, as we are all of one flesh and blood, and children of one Father, what is best for one class in a matter of this nature, must in very deed and truth be best for all.

I believe, then, that the narrowing of the area of *brother-and-sisterliness*—by which I mean that *felt relationship* which excludes the notion of marriage from the minds of those who live in habitual intercourse—would be a very great loss. And let us beware how we incur it; for the wrong, if once submitted to, is little likely to be again righted.

The comfort, pleasure and happiness of life depend largely,

as all will agree, on the comfort of the intercourse between man and woman, and this not in one relation of life, but in all. There must always be love and marriage—that is taken for granted—but there ought also to be friendship and *camaraderie*. The blessing of our time and country is the comparative freedom and frankness with which men and women can meet upon terms of friendship, talk and act together. The nucleus of this happy state of things is the relation of brother and sister, first as formed by ties of blood, and then, as enlarged by a wise instinct (sanctioned, I firmly believe, by divine as well as human laws), to include all such relations by marriage. Under favourable circumstances it extends farther yet, as many who have enjoyed the blessing of man's friendship to woman will bear me happy testimony. But in this wider area it is, of course, more dependent on circumstances, and more liable to disturbance and invasion from the master passion. This cannot be helped, nor need it; but let us earnestly deprecate a change which, by abolishing the relation of brothers and sisters-in-law, would recklessly narrow the region of peaceful and brotherly friendship which has so long subsisted to the great comfort, with the very smallest exceptions, of all concerned. Some advocate the change in the interest of *Liberty*. So far from promoting liberty, it would be the riveting of new chains upon us. The liberty to an infinitesimal minority to marry their near relations would be a cruel injustice upon the enormous majority, who, with the whole world to choose from, would prefer to seek a new wife farther from home, and yet to *keep their sister*. And this, if duly considered, will show the matter to be quite as much a man's as a woman's question, if indeed the two can ever be really separated.

I believe there are some men who see or imagine a difference between the cases of a man and his wife's sister, and of a woman and her husband's brother. I suppose it is a difference that a woman cannot see; at least I cannot. It is unfortunate for those who do, that the only *distinct* exception to the forbidden marriages of affinity in the Levitical law, should have been in favour of the woman marrying her husband's brother, and not the man marrying his wife's sister (*see* Luke xx. 27, and the references); but let that pass. Believing myself that the two are religiously and morally the same, let me conclude by drawing the attention of those who may not think the Scriptural argument conclusive, to the testimony of a secular teacher and a poet of our own. *Shakespeare*—no over-rigid witness surely—five several times in *Hamlet* speaks of the union of widow with husband's brother as *incestuous*. G.

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Marriage Law Defence Union Tracts

No. XIX

What the English Law says

as to a Deceased Wife's Sister Bill

LORD LYNDHURST'S ACT EXPLAINED

(WITH THE TEXT OF THAT ACT)

BY

J. THEODORE DODD

BARRISTER-AT-LAW

LONDON

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1883

Price One Penny

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What the English Law says

as to a Deceased Wife's Sister Bill.

THE WIFE'S SISTER BILL.

THE BILL introduced this session by Sir Thomas Chambers and others into the House of Commons is headed 'Marriage with a Deceased Wife's Sister'; but, in consequence of the Divorce Acts, it will, if it passes in its present form, enable a man, after divorcing his wife, to marry her sister in the lifetime of the wife whom he has divorced. It would enable him to do this whether the ground of divorce was his own sin or his wife's, and even though the sin for which the divorce was obtained was committed with the wife's sister whom he desired to marry. He might first seduce his wife's sister, and then, if a divorce was obtained, marry her.

This will be the result of the Bill which is styled the 'Deceased Wife's Sister Bill.'

This Bill is retrospective. It declares that all previous marriages with a deceased wife's sister, whenever or wherever contracted, shall not only be valid, but shall be deemed to

have been valid. It validates them as from the time when they were contracted. It is, therefore, in the fullest sense retrospective.

The only exception to this very sweeping enactment is, where either the man or the deceased wife's sister, with whom he had gone through the form of marriage, had, during the lifetime of the other person, married someone else.

There is also a clause attempting to prevent this retrospective clause occasioning any alterations in rights of property.

With regard to the future, the Bill will permit marriage with a deceased wife's sister in England and Ireland at the Registrar's office only ; but in Scotland, or in any country other than England or Ireland, it may be solemnised in any place whatever.

We propose here to give a very brief sketch, showing the state of the law before Lord Lyndhurst's Act (A.D. 1835), and the nature of the change introduced by that statute.

THE LAW BEFORE THE REFORMATION.

When Christianity came into England, it brought with it the prohibition of marriage with a deceased wife's sister. Christianity became (and is still reputed to be) part of the common law of England. And so it became part of the law of the land that marriage with a deceased wife's sister was unlawful. There was no occasion to pass an Act of Parliament to forbid it. The prohibition was part of the law of England long before any Act of Parliament was ever passed, or indeed any English Parliament existed.

THE REFORMATION PERIOD.

Before the Reformation there had grown up numerous prohibitions preventing marriage. Marriage between cousins was forbidden. Also marriages were often declared invalid because one of the parties had been previously 'precontracted' to some other person. But perhaps the most singular kind of relationship which was held to prevent marriage was that of 'spiritual affinity.' This was considered to be contracted between a godparent and god-child. Probably this idea was connected with the old Roman notion of adoption. By Roman law it was held that a man could not marry his adopted daughter, and so the Church not unnaturally imposed a similar barrier in the case of 'spiritual affinity.'

At the Reformation it was desired to sweep away all prohibitions, except those only which were deemed to be founded on God's law or the Levitical degrees, and accordingly by 32 Henry VIII. c. 38* it was enacted :

'THAT NO RESERVATION OR PROHIBITION, GOD'S LAW EXCEPT, SHALL TROUBLE OR IMPEACH ANY MARRIAGE WITHOUT (*i.e.* outside of) THE LEVITICAL DEGREES.'

It should be noticed that this Act of Henry VIII. did not *impose* the prohibition on marriage with a deceased wife's sister ; indeed, that would not have been possible, for such unions had been prohibited for centuries. It would have been as irrational as for Parliament now to pass an Act to declare that the eldest son should inherit his father's land, when such has been the law for several hundred years. But it will be seen that the Act, in effect, *continued* the

* This Act related also to precontracts. It was repealed so far as it related to precontracts by 2 & 3 Edw. VI. c. 23 ; and was wholly repealed by 1 & 2 Phil. & Mary c. 8, s. 19 ; but was again revived in part by 1 Eliz. c. 1, and so left in the same position as after 2 & 3 Edw. VI. c. 23.

prohibition, and based the whole marriage law on more definite ground, viz., God's law and the Levitical degrees.* For in *Hill v. Good*, in the time of Charles II., the Court of Common Bench decided that marriage with a deceased wife's sister was within the Levitical degrees, and was prohibited by God's law.*

THE LAW BEFORE LORD LYNDHURST'S ACT.

Before this Act, which was passed in 1835, if two persons who were related within the prohibited degrees had gone through the form of marriage, that union could only be declared void by a sentence of the Ecclesiastical Court. Of course it was not a valid marriage, whether the case was brought before the court or not. The law was the same

* The principle that God's law is to be the test of lawfulness of marriage is affirmed in the earlier statutes of Hen. VIII. relating to the King's succession and dispensations. (*See* 25 Hen. VIII. c. 22, entitled 'An Act Concerning the King's Succession.') This is stated in the *Chronological Index to the Statutes* to be repealed by 28 Hen. VIII. c. 7, s. 1 (s. 3, Ruff. App.); 1 Mar. Sess. 2 c. 1, s. 2 (s. 3, Ruff. App.). *See* also 28 Hen. VIII. c. 7, 'An Act for the Establishment of the Succession of the Imperial Crown of this Realm,' which the *Chronological Index* states to be partly repealed by 1 Mar. Sess. 2, c. 1, s. 2 (s. 3 Ruff. App.), 1 & 2 Phil. & Mar. c. 8, s. 4 (ss. 17, 20, Ruff.); repeal conf. 1 Eliz. c. 1, s. 4 (s. 13, Ruff.). The text of the Act will not be found in its proper place in the Revised Statutes, but the greater part of it will be found in the supplementary portion of that edition of the statutes at vol. xv., page 1198.

As to both the above Acts of Hen. VIII., *see* Burn, tit. Marriage I. The above principle was also affirmed in 28 Hen. VIII. c. 16, entitled, 'A Provision for Dispensations and Licences heretofore obtained from the See of Rome.' This appears still to be in force. *See Chronological Index* and *Brook v. Brook* (9 H. C. Cas. 193, 4 L. T. Rep. N.S. 93; 7 Jurist N.S. 422; 9 W. R. 461). In the Revised Statutes it is entitled, 'An Act for the Release of such as have Obtained Pretended Licences and Dispensations from the See of Rome.' It is printed in vol. xv. at page 1212.

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whether the relationship was by consanguinity or affinity, whether the marriage had taken place between a man and his deceased wife's sister, or between him and his own sister, or even with his own daughter. The prohibited degrees of relationship by blood and marriage were on the same basis.

People sometimes speak as though, before 1835, marriage with a deceased wife's sister was half lawful, and evidently think that it was regarded by the law as very different from a marriage with a man's own sister. This is not the case. The law was precisely the same as to both. It applied the same horrible epithet to either union.

But, as we have said, the marriage could only be declared void by the Ecclesiastical Courts, and the Civil Courts, which exercise a kind of corrective jurisdiction over the ecclesiastical ones, would not allow the latter to declare the marriage void after the death of either party; because then such a sentence would not tend to the reformation of the parties.

The ground of jurisdiction of the Ecclesiastical Courts in these matters was the reformation of morals and the prevention of sin.

If therefore two persons, who were within the prohibited degrees, but who had gone through the form of marriage, were brought before the Ecclesiastical Court, it would declare the marriage void, so as to prevent any further sin. It would not have been any use to punish the persons, and then allow them to continue in sin. The chief, if not the whole object of the Ecclesiastical Court, was the salvation of souls. So that while both parties were living, the Ecclesiastical Court could declare the marriage void.* But after one of the parties was dead, there was no actual necessity, for the prevention of sin, to declare the marriage

* If the marriage was declared void, it was void *ab initio*, not merely from the time of the sentence.

void as the union had come to an end by death, and to do so would have bastardised the children. So the Civil Courts interfered,* and prevented the Ecclesiastical Court from giving such a sentence as would have had that effect. But they permitted the court to punish the survivor, with the object of bringing him or her to repentance and deterring others.

But if the marriage was not declared void in the lifetime of both parents, it never afterwards could be impeached, and the children ranked as legitimate children, and the 'widow' could claim dower.†

It must not be supposed that therefore the marriage was, or ever became, valid. It is obvious that a union between a man and his sister could not be valid marriage, and the law was precisely the same for the deceased wife's sister. But still such a union had many and very important effects.

Hence many authorities state that before Lord Lyndhurst's Act, marriages within the prohibited degrees of affinity and consanguinity were *voidable*, and they are so styled in the preamble to Lord Lyndhurst's Act.

Lord Chancellor Hatherley, however, said that such marriages were always *void*, and his lordship said that he made this statement 'on the highest judicial authority—that of the House of Lords.'‡

* Before the reign of James I. the Ecclesiastical Court had declared marriages void even after the death of both parties. See Phill. Eccl. Law 738, and *Ray v. Sherwood* (1 Curteis Eccl. Rep. 197).

† The Courts seem to have been very liberal as to dower. In the case of an infant 'marriage,' if the 'wife' was over nine years old, Lord Coke says she was entitled to dower, even if her baby 'husband' was only four. (See Co. Litt. 33 a.) This was held to be marriage as far as dower was concerned.

‡ See speech of Lord Hatherley, published by Marriage Law Defence Union, page 10. He referred to the decision in the House of Lords in *Fenton v. Livingstone*, Jurist, 1859, p. 1183. The case is also reported in 3 Macq. H. L. Cas. 497; 7 W. R. 671.

The question is to some extent a matter of words only, and depends upon the definition of 'void' and 'voidable.'

In *Widgery v. Pepper* (5 Ch. Div. 523), Vice-Chancellor Malins said: 'Anybody who has studied the principles of law knows perfectly well, from *Coke on Littleton*, downwards, it is laid down that a void act cannot be confirmed, but a voidable act can.' If this definition is accepted, a marriage with a relation, or wife's relation, was clearly not voidable, for it could never have been confirmed.

In the Indian Contract Act, 1872, which is usually considered a masterpiece of scientific drafting, we are told that

An agreement not enforceable by law is said to be void. An agreement enforceable by law is a contract. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

Now it is clear that, before Lord Lyndhurst's Act, as at the present day, neither 'husband' nor 'wife' could have brought successfully a suit for the restitution of conjugal rights; so that if the above definitions with respect to an agreement are employed with regard to marriages within the degrees, it must be admitted that they were not merely voidable. But of course marriage is a status created by contract, and not a mere contract.

Probably the most accurate explanation is that before Lord Lyndhurst's Act, unions between relations within the prohibited degrees who went through the form of marriage were not marriages, but that nevertheless they had certain valid effects if they were not set aside.

Anyone who denies this must say that before 1835 a union between a man and his own sister was marriage!

EXPLANATION OF LORD LYNDBURST'S ACT.

It will be convenient to explain in a little detail the terms of this Statute, and point out the more glaring differences between it and the present Bill.

The Act consists of a preamble and four sections.

The first section declares that marriages which should have been celebrated before the Act between persons within the prohibited degrees of *affinity*, should not be annulled for that cause by the Ecclesiastical Court, except where there was a suit pending at the time of the passing of the Act. Before this Act many unions within the prohibited degrees of affinity had taken place, partly in consequence of the unsatisfactory state of the law, and partly, possibly, from a mistaken notion of what the law was. It was therefore, perhaps, also by way of a compromise, deemed advisable to enact this section.

It will be worth while to compare this with the clause in the Bill now before Parliament, which seeks to enact that former unions with a deceased wife's sister (made in defiance of the law) shall not be deemed *to have been* void or voidable.*

1. The Bill declares that the marriages shall be deemed to have been valid as from the date when they were illegally contracted—perhaps 20 years ago.

Lord Lyndhurst's Act is not, strictly speaking, retrospective; it merely declared that, *in future*, certain proceedings should not be taken to declare them void.

2. Again, the Bill declares the marriages are to be deemed not to have been void or voidable, *i.e.*, it in effect declares them *valid*.

Lord Lyndhurst's Act did nothing of the sort.† How

* See pages 3, 4 above.

† See judgment of Sir Herbert Jenner in *Ray v. Sherwood*, 1 Curteis Eccl. Rep. 197 cited below.

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could it? For it had been decided that such unions were within the Levitical degrees or contrary to God's law. It deprived the Ecclesiastical Court of the power of declaring them void, but it did not purport to make them valid.

It took away the remedy, but did not purport to give the right. This distinction is well known to lawyers with respect to the various classes of statutes of limitation, and is by no means a verbal one.*

In the present case, the difference between declaring an unlawful union lawful marriage, and taking away certain powers from a Court, is very great.

We may mention two important consequences of the mode in which Lord Lyndhurst's Act operated.

It seems, from the judgment of Sir H. Jenner in *Ray v. Sherwood*, that, even after the Act the Ecclesiastical Court would have been able to sentence the parties to penance for their sin. Of course, if the union had been declared to have been valid marriage, it could not have done so.†

And it seems clear that the Court would not have given to a *quasi* husband, who had married his wife's sister or wife's mother, any restitution of conjugal rights.

But, if the Bill becomes law, it will enable a man who has married his deceased wife's sister to drag the unhappy woman to him, and compel her to live with him, although she may have long repented of her connection with him, and have lived separate for years.

3. A third difference is that this clause proceeded on an intelligible basis. It distinguished, indeed, consanguinity from affinity, but it made no distinction between the various degrees of affinity. Unions with wife's mother, wife's daughter, wife's sister, wife's niece, were alike included in this clause. Also, there was not one law for the man and another for the

* See Pollock on contracts, p. 547.

† See page 15 below, and Lord Chelmsford's judgment in *Fenton v. Livingstone*.

woman; unions with husband's father, husband's son, husband's brother, and husband's nephew, were equally included.

With this before us, we may be quite clear that, if the present Bill passes, marriages with husband's brother and other degrees of affinity will soon follow.

4. The Act did not affect marriages which were already declared void. This Bill would. It would make valid* those which had been declared void before Lord Lyndhurst's Act. It would also validate all marriages with deceased wife's sister which have taken place since that Act.† For all such have, as we shall see, been declared void by section 2 of Lord Lyndhurst's Act.

The first section concluded with a proviso that nothing in that section should affect marriages between persons within the prohibited degrees of *consanguinity*.

Section 2 enacted

'That all marriages which shall *hereafter* be celebrated between persons within the prohibited degrees of *Consanguinity* or *Affinity*, shall be absolutely *null and void* to all intents and purposes whatsoever.'

This takes away all need for any declaratory sentence of any Court. Any children are illegitimate. Consanguinity and affinity are retained on the same basis, just as they were before the Act was passed.

Section 3 declared that the Act should not extend to Scotland. The present Bill does extend to Scotland.

Mr. A. C. Swinton‡ says marriages of this kind were always invalid in Scotland, and 'that the law of Scotland on this subject is now embodied in the Confession of Faith

* *i.e.* so far as an Act of Parliament can. See page 16 below.

† Except when either of the parties has lawfully married some other person. (See page 4 above.)

‡ The Convener of the Committee, on this subject, of the General Assembly of the Established Church of Scotland.

(which, like the Creed, combines all material points of faith), and, upon this point, is assented to by all the Presbyterian brethren. It is embodied in a Confession of Faith,* ratified by Act of Parliament.' The text of the chapter of the Confession relating to the prohibited degrees will be found on the next page.

TEXT OF LORD LYNDHURST'S ACT.

5 AND 6 WILL. IV. CAP. LIV.

An Act to render certain Marriages valid,† and to alter the Law with respect to voidable Marriages.

[31st August, 1835.]

Whereas Marriages between Persons within the prohibited Degrees are voidable‡ only by Sentence of the Ecclesiastical Court pronounced during the Lifetime of both the Parties thereto, and it is unreasonable that the State and Condition of the Children of Marriages between Persons within the prohibited Degrees of Affinity should remain unsettled during so long a Period, and it is fitting that all Marriages which may hereafter be celebrated between Persons within the prohibited Degrees of Consanguinity or Affinity should be *ipso facto* void, and not merely voidable: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled,

* The Westminster Confession, which is part of the Standards of the Free Kirk also.

† The general rule is that the title is no part of an Act (Maxwell on Statutes, edit. 1875, p. 34). See also judgment of Sir Herbert Jenner in *Ray v. Sherwood*.

‡ See pages 10, 11.

and by the Authority of the same, That all Marriages which shall have been celebrated before the passing of this Act between Persons being within the prohibited Degrees of Affinity shall not hereafter be annulled for that Cause by any Sentence of the Ecclesiastical Court, unless pronounced in a Suit which shall be depending at the Time of the passing of this Act : Provided that nothing hereinbefore enacted shall affect Marriages between Persons being within the prohibited Degrees of Consanguinity.

Marriages before the passing of this Act of Persons within the prohibited Degrees not to be annulled.

II. And be it further enacted, That all Marriages which shall hereafter be celebrated between Persons within the prohibited Degrees of Consanguinity or Affinity shall be absolutely null and void to all Intents and Purposes whatsoever.

Marriages of Persons within prohibited Degrees hereafter to be absolutely void.

III. Provided always, and be it further enacted, That nothing in this Act shall be construed to extend to that Part of the United Kingdom called *Scotland*.*

Not to extend to Scotland.

IV. And be it enacted, That this Act may be altered or repealed by any Act or Acts to be passed in this present Session of Parliament.

Act may be altered this Session.

WESTMINSTER CONFESSION OF FAITH.

(Approved by the General Assembly, 1647, and ratified and established by Acts of Parliament, 1649 and 1690, as the publick and avowed Confession of the Church of Scotland), chap. xxiv. sect. 4.

‘ Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the Word ; nor can such

* See page 12.

incestuous marriages ever be made lawful by any law of man, or consent of parties, so as these persons may live together as man and wife. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own.'

EXTRACT FROM JUDGMENT OF
SIR H. JENNER IN *RAY V. SHERWOOD*.

*This was a case of an alleged Marriage with a Deceased
Wife's Sister.*

In the first place this is a contract which is prohibited both by the laws of God and man—for so sitting in an Ecclesiastical Court, I should be bound to consider it, even if I were, as I am not, among the number of those who privately entertain any doubt on the subject.

'The enacting part of the Act does not declare these marriages to be good and valid to all intents and purposes, as it might be supposed from the title of the Act; and although the title, as well as the preamble, may be important where there is any doubt or ambiguity in the enacting part of a statute, when a reference may be made to the title and preamble for the purpose of explaining such doubt or ambiguity; but the title can give no effect to the enacting words of a statute where those words are plain and unambiguous. I apprehend that they are independent of the title, which can have effect only so far as to obviate and explain doubt or ambiguity in the enacting part of a statute. I do not think, where the enacting part of the statute is to the effect 'that all marriages, which shall have been celebrated before the passing of this Act, between persons

being within the prohibited degrees of affinity shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court,' that this amounts to a prohibition to the Ecclesiastical Court to punish the parties under another branch of the law for incestuous cohabitation. I apprehend the law is not altered in this respect, and the Court is not prohibited by this Act from punishing parties for such cohabitation, although it cannot declare the marriage null and void. . . . 'Again, if we look to the preamble of the Act, it is not for the protection of the parties who have been guilty of the offence, for such it is by the Ecclesiastical law and by the law of God, but for the protection of the children, for that is the purpose and object of the Act, to settle the estate and condition of the innocent issue of such marriages, not to screen the delinquent parties. But whatever may have been the intention of the legislature, and whatever may be the effect of this Act of Parliament, the marriage had between two parties, Thomas Moulden Sherwood and Emma Sarah Ray, is an incestuous marriage and must ever so remain. The law of God cannot be altered by man. The legislature may exempt parties from punishment ; it may legalise, humanly speaking, every prohibited act and give effect to any contract, however inconsistent with the divine law, but it cannot change the character of the act itself, which remains as it was, and must always so remain, whatever be the effect of the Act of Parliament.'

Marriage Law Defence Union Tracts.

No. XXVII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

Speech by Earl Cairns,

*Moving the Rejection of the Marriage Law Amendment
Bill in the House of Lords, June 11, 1883.*

EARL CAIRNS: I rise to ask your lordships to reject this Bill. I might, perhaps, take some exception to the course pursued by the noble earl opposite, as being hardly consistent with Parliamentary usage and precedent. We had last year a debate on the subject of the measure. The noble earl at that time made an elaborate argument in support of the Bill. There was an answer by my noble friend behind me (Lord Balfour of Burleigh), who moved its rejection. Then the noble marquess behind me (Marquess of Waterford) advanced some arguments in support of the measure. In reply the right rev. prelate the Bishop of Peterborough delivered a speech which many of your lordships will recollect as an extremely eloquent and impressive one, full of strong arguments in opposition to the measure. We, who were opponents of the measure, certainly were under the impression that the noble earl or some of his friends would have risen to answer the speech of the right rev. prelate. But, very much to our surprise, no one rose to reply to it, and the division took place. The noble earl now says that no answer was given to the arguments from his side; but he must allow me to say that there was no attempt to answer the speech of the right rev. prelate. I could not help expecting that the noble earl would even now have thought it desirable to make some answer to that

speech, but we find that whereas the debate of last year had no ending, the debate of the present year has had no beginning. The noble earl has been good enough to say that if any noble lord wishes to ask a question, he will be happy to answer it, but beyond that he has not condescended to advance any argument in support of the measure, although he has made one or two statements of facts with regard to information obtained since last year.

Let me ask your lordships to consider in the first place what is incumbent on those who desire that this Bill should be passed into law. This is a measure which for the first time seeks to overthrow a state of things in this country with regard to marriage which has prevailed from the earliest ages, ever since the introduction of Christianity into the country. It is a state of things which has had, I will not say the consent, but the uniform support both of the State and of the Church. It is a state of law which goes down, deep down, into the strongest feelings of the people of the country, and therefore those who seek now to alter this state of law are bound, at all events to this extent, to show the strongest reasons in support of the change they propose, and to show that they have, I will not say a bare majority of the country in their favour, but the preponderating weight and feeling of the country in their favour. Let us see how the case stands. The noble lord says that 400 members of the present House of Commons are in favour of the Bill. I do not know how he has obtained the information, but if you take the present Parliament and the last—two Parliaments together—covering, I suppose, nearly ten years, what has happened? There has been one division, and only one, in the House of Commons on the subject of the Bill in these two Parliaments, and in that division the Bill was thrown out. So much, therefore, for the feeling of the House of Commons on the subject. With regard to your lordships' House, I

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do not forget the small majority against the Bill last year ; I go beyond it, and I say that even if your lordships were equally divided, a change of this magnitude, a subversion of our marriage laws, ought not to be made by your lordships without a much more preponderating majority in its favour. What is the state of feeling in the country ? The Bill affects Scotland and Ireland, as well as England. I know there are some petitions from Scotland in favour of the Bill, but every one who knows Scotland will know that the heart and bone of Scotland are against this measure. I had the honour of presenting to-day a petition from the Free Church of Scotland against the Bill ; if I am not mistaken, the feeling of the Established Church of Scotland is also against it ; it is the same with the Episcopal Church, and I think it may be taken that the preponderating vote of Scotland would be entirely against the Bill. So far as I know the temper of Ireland, the same thing would be true. If you take the people of England as a whole, I feel satisfied that if you take the men and the women together, you would find a preponderating majority, not for, but against this measure.

I want to lay before your lordships what it is that this Bill proposes to do—what it would, and what it must do. It is quite true that it deals with the case of the deceased wife's sister, and with that alone ; but is that the end, or could it be the end ? What did the noble earl tell us last year ? Nothing could be more candid than his confession. He said :

‘ If I am asked why is the Bill not of a wider and more comprehensive character, embracing also marriage with a deceased husband's brother or deceased wife's niece, my reply is that . . . in theory, no doubt, the case for their legalisation is as strong as that which is dealt with in the Bill.

And my noble friend the noble marquess (Marquess of Waterford), who also advocated the Bill, still more clearly,

if possible, stated his view on this matter. The noble marquess said he thought it was quite clear that in legislation we should stop at blood relations. That is to say, that the whole prohibition against marriages by affinity should be swept away. The noble lords are perfectly consistent and logical in their views, for it is utterly impossible to stop short where this Bill proposes at this moment to stop. The noble earl said his view was this—that there were a great many more persons who were anxious to be freed from the prohibition against marrying a wife's sister than those who were anxious to be freed from other prohibitions. But, supposing this to be so, is it any answer to the others? If there are 500 men who wish to be at liberty to marry a wife's sister, and if there are only 50 men who want to marry a niece or any other relation by marriage, is it an answer to the latter to say, 'We admit that your case is perfectly logical, but still, because your number is so small, we will not repeal the prohibition.'

I will ask this also—is there any country in the world that has stopped where this Bill stops now? I put aside our colonies, for that is only a thing of yesterday. That is a matter of which there is as yet no experience; but take the countries which permit at this moment marriage with a deceased wife's sister. Will any noble lord who supports the Bill point out any one of those countries which stops at that point, and which does not go very much further? Will any noble lord point out to us where is the ground at which we can stop, and where is the security that the change will not be greater than is proposed by this Bill? I maintain that it is impossible on any principle of logic to answer the demand which may be made at any time after this Bill passes to go further, and, as the noble marquess said last year, to sweep away all prohibitions on the ground of affinity.

Again, my lords, this Bill has a peculiarity which, as far

as I know, is unexampled in our law of marriage. I know that some persons support this Bill by saying that it does not interfere with the religious question at all, but only deals with the question of civil marriage. That is exactly one of the objections which I make to this Bill. Here, for the first time in our history, we have a proposal to establish a new kind of marriage in this country—a sort of morganatic marriage—a marriage with a qualification. It provides that if a man marries his deceased wife's sister in church the marriage is to be void, but if he marries the same person before a registrar it is to be a valid marriage. That is establishing in this country a new kind of marriage of which we have never heard before. Here you have a marriage which can only be valid before a registrar and not in any other place.

With regard to the religious argument on the subject of marriage with a deceased wife's sister, the noble earl treats as if that argument were entirely given up, and yet he has circulated widely some information he has obtained in answer to questions put by him upon the religious view of the question as he understood it. I agree that this is not a convenient place for arguing a question on any religious view of the matter, but the noble earl compels me to do this and to point out that he appears to be entirely mistaken as to what is the religious ground of the objection to the present Bill. The noble earl, in the questions which he put to various learned persons, showed that he had not apprehended what was the religious ground of objection. He put questions on a particular clause in a particular chapter of the Old Testament, and asked for their idea on that clause. But those who object on a religious ground to a Bill of this kind would be prepared to put that clause entirely out of sight. The objection is simply this :—There is undoubtedly a code of law with regard to marriages contained in the Old Testament. Is that code a code which applied only to the Jews, and which did not apply further? The answer to that

can be given in a word. It did not apply merely to Jews, because the code states on the face of it that it was binding on the nations who were round the Jews and who were Gentiles. And it stated that violations of the principles of that code among those nations were punished severely. The code begins by saying you are not to marry any one near of kin. If it stopped there you might raise an argument that it meant near of kin, by way of consanguinity. But the code, in order to point out who are near of kin, gives as an illustration the wife of the brother of your father—that is to say, one who is related by marriage, and by marriage alone—and the reason it gives is that ‘she is your aunt.’ This shows that the words ‘near of kin’ do not relate solely to blood relations. The code does not profess to exhaust all the degrees of relationship, but it gives examples on one side, and leaves you to infer an obligation correlative on the other side. One of the examples it gives is the wife of a brother, and it has been held by divines and by the Church from the earliest ages that just as there is a prohibition against marriage with the wife of a deceased brother, so, correlatively, there must be a prohibition of marriage with the sister of a deceased wife. I will not say more than that, because I see the authority of Bishop Jewell invoked for a different purpose; I will remind your lordships of the words he used. Bishop Jewell said :

Albeit I be not forbidden by plain words to marry my wife's sister, yet I am forbidden to do so by other words, which by exposition are plain enough, for when God commands me that I shall not marry my brother's wife, it follows directly by the same that He forbids me to marry my wife's sister; for between one man and two sisters, and one woman and two brothers, is like analogy or proportion.

Now add to this the positive statement in the Bible, repeated no less than four times, that husband and wife are one flesh, and you have a consistent and intelligible rule which has been understood and acted on by the Christian Church and by Christian States from the earliest age.

The noble earl appears to be entirely ignorant of this argument in the questions which he put to the learned persons whom he consulted. They are consulted simply on the translation of a few words in a different clause, which can be translated one way or the other without affecting this argument in the slightest degree.

My lords, the noble earl to-night has not advanced any arguments in favour of the Bill, but we have been favoured to-day with what is somewhat unusual—the publication in the public prints of the argument in favour of the Bill by a Society of which the noble earl is the spokesman, and which promotes the measure. Some persons may, perhaps, be misled by a remarkable statement in that manifesto, and therefore I must take notice of it. It is stated that ‘the Bill would give to the people of this country the same liberty with regard to marriage with the sister of a deceased wife which they enjoyed up to the passing of Lord Lyndhurst’s Act in 1835.’ My lords, is that a true description of this measure, that it puts things exactly in the position they were in before Lord Lyndhurst’s Act passed? I speak with some knowledge of the law, I hope, and I assert that nothing more inaccurate could be said. I say it is perfectly inaccurate so to represent this matter. I say that before Lord Lyndhurst’s Act passed these marriages were illegal and void. This has been so decided by your lordships’ House as the highest tribunal in the realm. They were technically spoken of as voidable, no doubt. That is to say, the sentence of the Court was needed to declare that they were void. But, as Lord Brougham said, they were voidable because they were void. The history of the law on this subject is very simple and very plain. The law on the subject of these marriages by affinity had its origin before Christianity. It was the law which was held by the Romans themselves before Christianity was adopted as the religion of the Roman State. ‘The profane lawgivers of Rome,’

says Gibbon, 'were never tempted by interest or superstition to multiply the forbidden degrees; but they inflexibly condemned the marriage of sisters and brothers, hesitated whether first cousins should be touched by the same interdict, revered the parental character of aunts and uncles, and treated affinity and adoption as a just imitation of the ties of blood.' As Christianity was introduced the same law was adopted. I have seen it stated in the same document to which I have referred that it was only in the fourth century that there was any prohibition of these marriages. My lords, that is an entire mistake. The law of the Church—which was in those times the only law of Christianity—condemned these marriages for centuries after the introduction of Christianity. If you read the statement of Basil at the end of the fourth century it is perfectly unequivocal. 'We know of no such marriages,' he says, 'they are incestuous; they do not exist.' Again and again has the challenge been given—let any one produce an instance where such a marriage was permitted before the well-known dispensation given by Pope Alexander Borgia. What about the law of England? The law of England was the law introduced along with Christianity. It prevailed up to the reign of Henry VIII. But did the statute of Henry VIII. introduce a new law? No. The statute was passed for this reason. The Church had gone too far. The Church had extended the law and had prohibited marriages on the ground of precontracts. The statute of Henry VIII. was passed for the purpose of making it clear that these prohibitions were not to be held valid. At the same time the statute to which I have referred, and which is still in force, pointed out what were the degrees within which the prohibition against marriage was to remain in force, and this is one of those degrees. That was the state of things when Lord Lyndhurst's Act was passed. Now the noble earl is of opinion that these marriages were legal at the time of that Act. If the noble earl were right,

the result would be that at that time marriage between brothers and sisters was legal. The Act does not speak of marriage with a deceased wife's sister. It does not mention that or any other degree of relationship. It deals with all marriages within the prohibited degrees, whether of consanguinity or of affinity. They are all classed together, and there is no distinction whatever between them. What the Act does is this. It does not make valid past marriages within the prohibited degrees of affinity, but provides, with respect to those which had taken place, that proceedings should not be allowed to be taken in the Ecclesiastical Courts for the purpose of having them declared to be void. It was held in your lordships' House, after the most solemn argument, and in a case to which Lord Lyndhurst's Act might have applied, that these marriages were void, and that the children of such a marriage could not inherit as legitimate. Therefore, my lords, the statement that this present Bill will give the freedom which existed at the time of Lord Lyndhurst's Act is entirely unwarrantable. I know it is said that a collusive action might have been brought before 1835, which would have the effect of protecting such marriages. But if any person really had an interest in impeaching such a marriage it is a delusion to suppose that the action could have protected any marriage against an attack of that kind.

Now, my lords, we are told by the noble earl that other countries have allowed these marriages, and that in those other countries they work well, and we are told that there is no country in Christendom in which these marriages are not allowed. In answer to that, I would say in the first place that there is no country which allows the marriage which this Bill makes legal without going much further. Let us see what those countries are, and whether we are prepared to follow their example. Take the case of France. Does France really allow marriage with a deceased wife's sister? France does not allow the

marriage without a dispensation. But if a dispensation be granted, it allows marriage equally between uncle and niece, aunt and nephew, and with a deceased brother's wife. In effect, it sweeps away by a dispensation all the prohibitions with regard to affinity. In like manner Holland does the same thing, and Prussia does the same thing, or goes further. Then the question arises, is domestic life in these countries holier, purer, happier than it is in this country? Does the noble earl bring proof of that? I have not heard any from him, and I anxiously waited to hear. Here is what a German doctor of philosophy said, who was asked his opinion about the state of the law of marriage in his country :—'It makes a German cover his face with his hands for shame.' The noble earl said that in other countries there might be more facilities for divorce, but that he had nothing to say to that. I always thought that divorce had a good deal to say to marriage ; and that facilities for divorce had a good deal to do with married life. Then the noble earl takes us to America. But he overlooks the vast dominions where the law of the Eastern Church prevails which does not admit these marriages, either by dispensation or otherwise. But let us go to America, as the noble earl has referred to it. What is the case in America? I take the State of New York, of which we know more than of the other States. What I find is this. The only prohibitions are the marriage between parents and children and their offspring, and between half-brothers and half-sisters. You may marry the sister of your father or mother, and a man may marry a mother and her daughter one after the other. The noble earl has consulted a number of persons in the United States, where, it is said, this institution works well. I own I was rather surprised at his doing so ; for I thought all Americans thought all their institutions worked well. I never met any American who did not think so, and I am quite ready to assume that

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the opinion of all Americans is that their institutions work well, and this excellent institution among the rest, that a man should be able to marry a woman and her daughter one after the other. But would it work well here? I take leave to doubt it very much. The noble earl says you must not say anything about divorce. But if you take in America you must go a little into the question of divorce. An American will tell you that conjugal infidelity is perfectly unknown in his country. You will ask him, how is that? He will say, 'That is on account of our law of divorce.' How does that produce conjugal fidelity? 'The way is this,' he will answer: 'the conjugal vow never is broken, because if it becomes irksome we have no difficulty in getting rid of it altogether, and thus our institution of divorce works well.' The noble earl can get plenty of authorities to the same effect. But let me ask the noble earl to go further into America. An Englishman has recently given us an interesting narration of his experiences of life in Utah. This gentleman was not, when he went, prejudiced in favour of the state of things prevailing there. He stayed there some months, and he says that the demeanour of the women in the Salt Lake country was modesty itself, and their conversation breathed the highest tone of morality and virtue. He says if you wish to see healthy and well-regulated nurseries, you ought to go to Utah, and that the institutions of the country work admirably. No doubt a law has been passed by Congress and the Senate to put a stop to this state of things. But the people of Utah say that this law was passed by a tyrannical body, just as an eminent public man of our own day, who says, in effect, of our own law, in language which seems almost borrowed from Utah, 'I believe these marriages are right, and I do not care who says they are wrong; they work admirably, and I believe they are proper marriages.'

Then it is said that these marriages have been made

legal in the colonies, and that very serious results may follow if we do not assimilate our laws to the colonies. The statement was made very broadly, and I was somewhat surprised to hear it—but I followed the words correctly—that a man and a woman may be married in the colonies, and be lawful husband and wife, and in this country be no longer so ; and that thus a man may have two wives—one in the colonies, and one in England. Now, my lords, I am very sorry there should be any difference of law between this country and the colonies, because in the abstract it would be better that the law should be assimilated between them. But I repudiate altogether the idea that in case of such difference we should in all cases follow suit to the colonies. What would be felt if we said to the colonies that they ought to adopt our legislation? What would be said if it were proposed that because our colonies would not adopt Free Trade, therefore we should give up Free Trade? But, my lords, as regards this broad suggestion about the result of the law, let there be no misunderstanding. I speak in the presence of persons who are much more acquainted with this matter than I am myself. I say that that is an entirely inaccurate view of the law. My view of the law upon the point is this—that if a man, being domiciled in a colony in which it is lawful to marry a deceased wife's sister, does marry his deceased wife's sister, his marriage with her is good all the world over, whereas if the man is a domiciled Englishman, not domiciled in the colony, but merely resident there, his marriage with his deceased wife's sister in such circumstances is bad everywhere, because he carries the impediment of his domicile to such a marriage with him. It is therefore idle to say that such a marriage may be valid in one of our colonies and invalid in this country.

Coming to the next point, I see that it is stated that a great number of these marriages have already taken place

in this country, that public opinion goes with such marriages and not against them, and that no repugnance to such marriages is felt among the people. With regard to the number of these marriages that have taken place I shall have something to say by-and-by, but in the first place I demur altogether to the doctrine that it is sound ground for legislation that a number of persons who with their eyes open have knowingly broken the law should come to Parliament and say, 'The fact that we have broken the law is sufficient ground for unmaking the law.' What would be thought of those persons who have committed the offence of bigamy coming to this House and saying, 'We have broken the law by marrying two wives. A great many of us have done so, and the law is very hard upon us, and therefore we ask you to change the law.' Take the case also of those engaged in smuggling. They might say that a great number of them have committed that offence against our fiscal law, but that the law is a bad one, that public opinion goes with them in their violation of it, and that therefore they ask you to do away with it.

Then as to the numbers of these marriages which have taken place in this country. I wish that we had some reliable statistics on the subject before us. I have heard a great many broad statements made with reference to the number of these marriages, but no clear proof has been given us on the point. I recollect hearing in 1855 in the other House of Parliament the present Prime Minister quote some statistics on which he said he placed reliance, and which were certainly very remarkable. Mr. Gladstone said on that occasion that inquiries had been made over an area comprising 100,000 persons, and that in that area 326 irregular marriages had been contracted, 144 of them being marriages with a deceased wife's sister. But a further examination of the figures showed that out of those irregular marriages 75 were cases of bigamy and polygamy, 46 were

marriages with a brother's wife, 24 were with a niece in blood, and 17 were with a wife's niece. I want to know what reply you would make to the demand of those who had married their wife's niece for a change in the law if the principle is to prevail that because the law has been broken it ought to be changed. Why are you to apply that principle to only one section of these irregular marriages and not to the others? A noble friend of mine (Earl Beauchamp) stated in this House that on inquiry he found that in one parish there were 28 cases of incestuous unions, three being with a deceased wife's sister, two with a wife's sister, the wife being alive, seven being cases of men living with their own daughters, 10 with their own sisters, and six with their nieces. This is an answer to the assertion which has been made as to the immense extent to which these marriages prevail. Then I would ask whether there is any satisfactory proof that public opinion goes in favour of these marriages. I think that the case in this respect will be found to stand thus—that just as your lordships are divided in opinion with reference to this subject, the opinion of the public is also divided, and those who are for relaxing the law are in favour of these marriages, and those who are for maintaining it are against them. The noble earl says that there is no repugnance felt in the country to these marriages. I should like to put that assertion to a simple test. The noble earl's own Bill proposes to prohibit these marriages from being celebrated in church. What is the reason of that? The noble earl will perhaps tell me that he has placed that proviso in the Bill so as not to offend the religious feeling of this country. But is the religious feeling of this country so slight and trivial a thing that while you are afraid to offend it by permitting these marriages to be celebrated in a church, you say at the same time that it is no evidence of a repugnance to these marriages in the country? I will take another test—that of the Divorce Act. Section 27

of that Act says that 'a wife may present a petition for dissolution of marriage on the ground that her husband has been guilty of . . . incestuous adultery ; provided that incestuous adultery shall be taken to mean adultery committed with a woman, with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity.' The question I have to ask the noble earl is, Is he going to retain that provision or to do away with it? Does he intend to say that when a man violates the bond contracted with his wife it shall be just the same whether the offence is committed with his wife's sister or with any other person? Will the noble earl carry public opinion with him on that point? But if he is going to retain this provision, what becomes of his statement that there is no repugnance to these unions? It stands upon the face of it that the words 'incestuous connexion' cannot be got over. I will take one other test. The noble earl said that he could see no difference between the marriage with the widow of the brother and that with the sister of the deceased wife. Neither can I. Was our great dramatic poet so ignorant of the feelings of his countrymen, so ignorant of the effect of marriages of this kind, that he spoke that which was at variance with public feeling in his greatest work, when in almost every page of it he describes the marriage with a deceased brother's wife as an incestuous union?

Then it is said that this is a poor man's question, and that is an argument which has been very much pressed upon us. But even if these marriages were greatly resorted to by the poor, I should not regard that fact as an argument in favour of a change in the law, because we ought not to have one class of legislation for the rich and another for the poor. If such a change of the law is required at all, it must be required by all classes, and not by one class only. But is this a poor man's question? What is the evidence upon

the point? There was no person who took more trouble in reference to this subject than my noble friend the late Lord Hatherley. He told us that a clergyman once wrote to him and informed him that in his parish alone there were known to be twenty or thirty widowers, poor men, who were ready to marry their deceased wives' sisters if the law were altered. My noble friend in reply informed the clergyman that if he would send the names and addresses of these persons, he would make inquiries on the point, and the result was that he never heard anything more about the matter. Lord Hatherley, however, made some inquiries into the subject himself. He found that in two parishes in Westminster there were 60,000, 40,000 of them being poor. He employed an active person to make inquiries, and he could hear of only one such marriage, and a newspaper challenged the accuracy of this report on the authority of a City missionary, who said that he had found another such marriage in these parishes. The Royal Commission which sat to consider this question in 1847 and 1848 had better means of getting at the truth upon this point than we have, and they were assisted by two most eminent solicitors, and they found that between the time of the passing of Lord Lyndhurst's Act, and of the inquiry, 1,608 such marriages had taken place between the rich and only 40 between the poor. Are we then to accept these wild and broad statements that this is a poor and not a rich man's question? If this had been a poor man's question we never should have heard of the present agitation. It is the money of the rich that has got up this agitation and paid for it from beginning to end ; and these advertisements, of which you see column after column in the newspapers, are not paid for by the poor but by the rich, and it is a rich man's and not a poor man's question.

But then it is said that the children of these marriages are the victims, and that their injury should be redressed.

I am sorry for them. It is quite true. It is the case always that the children suffer for the wrong done by their parents. So it would be in the case of bigamy, so in the case of polygamy. We have children born out of wedlock altogether. Are they guilty or innocent? And are you going to undo the law in regard to bigamy or polygamy, or children born out of marriage altogether, because the children suffer and are innocent? How do the children of these marriages suffer more than the children of any other marriage which is illegal?

I remember the noble earl, the Secretary of State (Earl Granville), speaking a year or two ago about this Bill said, 'Well, after all, what harm can the Bill do. It is only a permissive Bill.' My lords, if you make any change with regard to the degrees of marriage it can only be a Permissive Bill; you cannot make people marry under them.

The noble earl (Dalhousie) referred to the opinion of the right reverend Bench on this subject, and he said they were deeply interested in the question, and he regretted their attitude generally towards it. I observed that almost in the same breath the noble earl paraded before us the names of some bishops who agreed with the Bill. He was very proud of them; they were persons of great weight; but the opinions of the right reverend prelates who disagreed with it were not entitled to any notice at all except censure. Because the noble earl did censure them, referring to them in a way which could not but be invidious. My lords, I should blush for the right reverend Bench if on a question which more than any other concerns the morals, the religious feeling, and the social and domestic happiness of the country they did not take their deepest, their strongest, and their most clearly expressed part in it.

And that brings me to what is the last view which I desire to present to your lordships. It is the effect of this measure in a domestic and social point of view. We have

heard again and again that the sister of a deceased wife is the best guardian and the tenderest caretaker of her sister's children. That is perfectly true, and I desire to perpetuate that well-known feature in family life. It is for that reason, perhaps more than any other, that I demur to this Bill and desire your lordships to reject it. I believe this Bill would break up, if it were passed, our social and domestic circles. What is it which is achieved by the prohibition against marriage within the prohibited degrees? It is not merely some physical ends which are gained, but much higher and much holier ends. How is it that circles are created within which pure and dispassionate love can dwell securely? They are not created by nature, because nature would lead us to disregard all prohibitions. They are created by usage, by custom, by teaching, by the prohibition of the law. These things create a habit and secure for us those circles of domestic purity through which the greatest blessings and happiness have flowed to us. And what takes place when that moment of supreme sorrow comes upon a family, when the mother is taken away and when the children are left without her care? At that instant, without waiting for the lapse of time, who is it that most naturally enters the darkened house to soothe and care for the children? It is the sister of their mother. That can be done now fearlessly. Could it be done if this Bill were passed? I know there are men who say it could; is there any woman who says it could? Do you suppose it would be possible for any woman of marriageable age to expose herself to the scandal and the insinuation that would arise if the law were changed? I have had, as I daresay many of your lordships have had, communications upon this subject, expressed as women only can express them. I cannot venture to trouble your lordships with them, but there is one of which I can make use. It is written to me by a person with whom I am not acquainted, but I have made inquiries and ascertained that

it is written by one who is what she professes to be, a lady having care of the children of a deceased sister in the house of her brother-in-law. And this is what she says, speaking of this Bill :

From all we can learn of the present movement it is far more a retrospective one than anything else. I mean that it is urged on by a few influential people who married their deceased wife's sisters, and who now desire to repair the wrong they have done to the children born of such marriages by trying to get the law to declare them legitimate, and not because such a law is desired by the people of England. Unfortunately it is one of those social questions which does not press itself on people's attention as an important one, except to those whose personal or family relations will be influenced by it ; but to them it is indeed one of most serious moment. Its effect on the lives of such bereaved families will be a cruel one, for in making the relation of marriage possible between a widower and his sister-in-law it must, of necessity, also place them in the relation of perfect strangers to each other, and set apart those who have naturally come to feel a strong, helpful affection for each other ; but, worst of all, it will make it impossible for a woman to give the love and care to her dead sister's children which every feeling of her heart and mind would prompt, unless, indeed, she do it under the scathing ordeal of the world's scandal. It would not only set this seal to sorrow after a wife's death, but would impair the happiness of married life from its commencement, for we women are not all supernaturally wise, and many of us, we must admit, are jealous ; and to those who were foolish the expression of a husband's affection for his sister-in-law would be a vexation, while to those who were good and strong the thought of the possible future would be a constant anxiety. When each child was born she would remember that if her life was taken her people could no longer be her husband's people, her children would be estranged by the effects of the law from their care, and her husband would be left to the alternative of probably making too hasty a marriage to make a wise one, or of giving his children to the thin protection of hired care.

These are views which I believe are the views entertained by the intelligent women of this country ; and what I regret above all is that this is an attempt by the minority to tyrannize over the majority. Those who desire marriages of this kind are the minority, which I will not call miserable by way of disrespect, but only miserable as regards the number who compose it, and in order to gratify this minority you are asked to destroy the whole domestic and

social comfort and happiness of the vast majority of the families of the country. I trust your lordships will not be led to give your assent to this Bill. To this House, of all others, the country is wont to look for protection against violent disintegration and change. This Bill would cause a disintegration in our marriage law such as never has taken place before ; it would overthrow the clear and definite foundation on which that law now rests, and it would leave us nothing but an arbitrary, uncertain, and shifting rule in its place. I beg to move that this Bill be read a second time this day six months,

Price One Halfpenny.

Marriage Law Defence Union Tracts.

No. XXVIII.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

Pleas for Marrying a Wife's Sister and Plain Answers to them ;

*Or, Remarks on Twenty-three Assertions, frequently
made by those who would alter the Law for-
bidding a Man to Marry his Wife's Sister.*

ASSERTION I.—Marriage with a deceased wife's sister is nowhere prohibited in Scripture.

Remark.—If *express words* of Scripture are required in order to constitute a prohibition of a marriage, the marriage of a man with his own daughter, or with his own niece, is not prohibited in express words of Scripture, any more than marriage with a wife's sister.

ASSERTION II.—This marriage is not prohibited by plain and necessary inference from the words of Scripture, the case of a wife's sister being not parallel to that of a husband's brother.

Remark.—Marriage with a wife's sister *is* prohibited by *plain and necessary inference* from the words of Scripture, for it is said that a man may not marry his brother's wife, *i.e.*, that a woman may not marry with two brothers ; analogously, a man may not marry two sisters, *i.e.*, he may not marry his wife's sister. The cases are exactly parallel : for, how is it

proved that a woman may not marry with her father? By the parallel or analogous command, that a man shall not marry his mother.

ASSERTION III.—This marriage is expressly mentioned in Lev. xviii. 18, and there the prohibition is limited to the lifetime of the wife.

Remark.—The passage, Lev. xviii. 18, on which this assertion is founded, is rendered two ways by the translators of the Bible. In the margin it is rendered thus, ‘neither shalt thou take one wife to another, to vex her, during her lifetime.’ This makes it a prohibition of polygamy. There are four grand reasons for preferring this latter rendering :—

1st. Because the marriage of a man to his wife’s sister has been already forbidden *inferentially*.

2nd. Because it seems strange that the only express indication of the lawfulness of marrying two sisters at all (which is contrary to what we should otherwise have inferred from analogy), should be found in a prohibition against marrying a second sister during the lifetime of the first.

3rd. Because this is the only re-enactment found in the Levitical law of the primal law against polygamy.

4th. Because the rendering has been sanctioned by Hebrew scholars of considerable eminence.*

ASSERTION IV.—The Jewish Law allowed and even provided that a woman should marry with her deceased husband’s brother (Deut. xxv. 5), therefore it is quite allowable for a man to marry his deceased wife’s sister, who would be a most natural person to take care of his children.

* The marginal translation is approved by Schleusner, by Junius and Tremellius, by Dr. Hammond, by Pool in his ‘Synopsis,’ by Ainsworth and Willet, and by Dr. Pusey. This is surely a combination of sufficiently varied authorities.

Remark.—This was merely a provision of the Jewish law of inheritance. If a man died childless, his nearest kinsman, who might be his brother, but was not necessarily so, was to marry the widow, and the first-born of this marriage was to inherit her deceased husband's property (Deut. xxv. 5-9, and Ruth ii., iii., iv.). In this case only was the general ordinance against marrying a deceased husband's brother (Lev. xviii. 16), contingently set aside by God, speaking by Moses.

Besides, even if such a marriage were generally allowable, one does not see how that would help the promoters of a change in our law. Because a *childless widow* might, under certain circumstances, marry with her deceased husband's brother, does it at all follow that a *widower* not childless, but *with children* (for that is the plea urged), may marry his deceased wife's sister?

ASSERTION V.—The Jews, to whom the sacred oracles were given, have always understood the marriage to be permitted by Lev. xviii. 18, and set a special mark of approbation on this marriage, by allowing it to take place, when there were young children, earlier than in ordinary cases.

Remark.—It is not true that the Jews have always understood the marriage to be permitted by Lev. xviii. 18. And, even if it were true, surely they are scarcely to be attended to as infallible authorities, who even in our Lord's time 'had made the law of God of none effect by their traditions which they had delivered.'

ASSERTION VI.—The Roman Catholic Church does not regard this marriage as forbidden in Scripture.

Remark.—This marriage was accounted contrary to God's law by the whole Church down to the beginning of the Fifteenth Century, when Pope Martin V. (1417-1431),

issued a dispensation for marrying a wife's sister, with a view to settling difficulties as to the succession to Navarre. Other marriages, not forbidden expressly or inferentially in Scripture, and not forbidden in our Table, had frequently been dispensed with by popes before ; but neither this, nor any other on our list. Alexander VI. (Borgia, 1492-1503), followed Pope Martin's example by issuing dispensations for the union of Emmanuel, king of Portugal, with his sister-in-law, and for the union of Ferdinand, king of Sicily, with his aunt. The next instance of dispensation of this kind, took place under Pope Julius II. (1503-1515). It was granted on the death of Arthur, Prince of Wales, to enable a marriage to be contracted between his brother, afterwards Henry VIII., and his widow. Pope Clement the Seventh refused to annul this dispensation ; and from that time it has suited the Church of Rome to confound together, marriages which their Church forbids, and marriages which Scripture forbids, *i.e.*, to declare, in effect, that they are all of the same character, prohibited merely by Ecclesiastical authority, and so, capable of being allowed by Ecclesiastical authority. It declares, indeed, that dispensations for this particular marriage are rare, and reluctantly granted, and only for grave reasons and to avoid greater evils. But are we to imitate that Church, and to allow, under any circumstances, what the English Church and the Greek Church have always considered to be forbidden by Scripture ; and, we may add, what the Presbyterian Kirk of Scotland has declared by her confession of faith to be contrary to God's law ?

ASSERTION VII.—Protestant Dissenters regard the permission of this marriage as Scriptural and expedient.

Remark.—The religious Protestant Dissenters are very much divided upon this subject. The Presbyterian Kirk of

Scotland, whose belief resembles that of large bodies of Protestant Dissenters in many respects, is opposed to it, so far as its formal documents are concerned, and also so far as the feelings of the generality of its members are concerned. But are we to abandon everything that Protestant Dissenters disapprove? If so, we must abandon episcopal ordination, which they do not allow, and give up many important points besides. It is, moreover, to be recollected that, especially since the Liberation Society commenced its operations, many Dissenters have abandoned their former religious objections to this marriage, and are advocating it simply because it is disapproved of by the Church of England.

ASSERTION VIII.—This marriage may be celebrated by dispensation or otherwise, in almost every country in the world, except England and Ireland.

Remark.—This has been already answered in remarks on Assertion VI. It need only be observed further, that *almost* is a very disingenuous word, and it is beyond dispute that in many of our colonies the legalisation of this sort of marriage has been brought about by unceasing agitation carried on now for many years. And the question naturally occurs, Are we to follow them who ought rather to have awaited our lead? Lord Carnarvon replied to a deputation which urged the subject: 'If their request were granted, the Colonial Parliament had nothing to do but to pass Acts within a certain province of legislation, and the Mother Country, in order to avoid a discrepancy, would have to change its legislation, so as to conform with that of the Colonies.'

As for the United States, though this marriage is not forbidden by the civil law, there has been amongst many

American Churchmen a decided repugnance to it for many years. And this is a growing feeling. As a proof of this, it is proposed that a declaration on the subject shall be adopted by both Houses of the General Convention of October next, in the form in which it was made by the House of Bishops in 1808. This runs as follows: 'Resolved that "*the old Table of Affinity and Kindred, wherein whosoever are related are forbidden in Scripture to marry together,*" is now obligatory on this Church, and must remain so unless there should hereafter appear cause to alter it without departing from the Word of God, or endangering the peace and good order of this Church.'

ASSERTION IX.—In no country has it been proved that the permission of this marriage has been attended with injurious consequences.

Remark.—The words of a late Bishop of London, Dr. Blomfield, may be quoted in answer to this. 'In France these marriages were prohibited till 1792, when the law was altered, and the consequence was such a flood of immorality, and such injury to domestic purity, that the Emperor Napoleon, in his *Code Civil*, found it necessary to renew the prohibition. In 1832, the law was again changed, and dispensations were allowed to be granted in certain cases—the worst possible state in which the law could be placed; and with respect to the effects of the law of France, he (the Bishop) thought their lordships would not be induced to alter the marriage law of England from any admiration of the present state of society in that country. As to Germany, the facility with which divorces were granted was quite frightful; moreover, it must not be forgotten that the advocates of this measure had not dissembled that this was the first step towards a general relaxation of those prohibi-

tions on which the purity of our domestic relations, and the peace and happiness of families, so mainly depended.'

ASSERTION X.—The absolute prohibition of this marriage in England is a recent innovation, dating no further back than to Lord Lyndhurst's Act in 1835.

Remark.—This assertion may be met by an extract from the Appendix to a speech by Vice-Chancellor Page Wood, afterwards Lord Hatherley : 'The state of our law is singularly misunderstood, not only "out of doors," but by many members of Parliament. It is supposed that, because the marriage with a wife's sister was *voidable* only, and not *void*, until Lord Lyndhurst's Act, there was a species of half-sanction to such unions. Now the fact is that no such marriage was ever in the smallest degree sanctioned ; but the Courts of Common Law would not allow any proceeding in the Ecclesiastical Court to set them aside after the death of either party, so that after the death of husband or wife there was no mode of obtaining a judicial decision, and of course all marriages actually solemnized were good till such sentence was given. The best mode of making this understood is to call attention to the case of marriage with a man's own sister or mother, being in precisely the same position, and in the same sense voidable only, not void.'

In this opinion Lords Brougham, Cranworth, Chelmsford, and Wensleydale concurred in their judgment on the celebrated case of *Fenton v. Livingstone*.

During the recent Debates in the House of Lords, the President of the Marriage Law Reform Association, Lord Houghton, twice ventured on a strange statement. He said that the passing of the Bill to legalise marriage with a wife's sister would simply have the effect of placing parties contracting it in the same position in which they would have

been before Lord Lyndhurst's Act. It has been clearly shown that the two cases are essentially different. Before that Act they would have contracted at their peril an alliance which at any time before the death of one of the parties might have been declared illegal. If Lord Dalhousie's Bill were to pass, they would be placed out of all danger at once. Where then would be the likeness?

ASSERTION XI.—Before that date, there is no instance of a suit to annul such marriage, or punish the parties, on the ground of religion and morality.

Remark.—Many suits were instituted in the Ecclesiastical Courts before the Act of 1835 to annul such marriages, or punish the parties contracting them, on the ground of religion and morality (which is the formula of those courts), and the Courts of Common Law upheld their decisions. (But see the remark on Assertion XII.)

ASSERTION XII.—The Act of 1835 purposely avoided touching on the question of what were the prohibited degrees, leaving that important subject for future consideration.

Remark.—Of course the Act of 1835 purposely avoided touching upon the question of what were the prohibited degrees. It had two objects in view. First, to improve the mode of procedure by which these unlawful marriages might be set aside; *i.e.* to declare them *void* ab initio, instead of *voidable* after any distance of time during the life of both the parties. Secondly, to declare that certain instances which had occurred before the procedure had been improved, and which possibly might have been contracted in ignorance, should (for the children's, not for the parents' sake) not be annulled in the Ecclesiastical Courts. The law on the subject was *in itself* clear enough, and did not require

to be further explained. The 32nd of Henry VIII. c. 38, had set forth most clearly that the Levitical degrees are legal bars to marriage. Many suits had been carried on in the Ecclesiastical Courts to set aside marriages with a wife's sister on this ground. The Courts of Common Law had been appealed to against their decision, and had ruled that such marriages are within the Levitical degrees, and therefore unlawful. It was therefore quite unnecessary for the Act of 1835 to say anything upon a point which was already beyond controversy.

ASSERTION XIII.—This Act either renders valid retrospectively, wicked marriages, or it condemns, prospectively, innocent ones.

Remark.—The Act of 1835 has indeed for its title 'An Act to render valid certain Marriages'; but surely it did not render them valid in order to license what was wicked, but for a very different purpose: this was, to protect the issue of marriages of this character, by putting them in the same position as they would have been placed in under the law as it before stood, if one of their parents were dead. Again, that Act did not prospectively declare for the first time that a certain class of marriages should be prohibited. It did but declare that, whereas such marriages were only voidable before, and occasioned great anxiety and suspense to the children until the death of one of the parties, they should be held void ab initio. Besides, supposing this Act to have been a wrong step, we need not follow it up by another wrong step. Herod was wrong in making a rash oath; he did not set himself right by abiding by it.

ASSERTION XIV.—That Act does not command the respect and obedience of society.

Remark.—The Act of 1835 may not command the

respect of society universally, because some persons may doubt whether the instances of unlawful marriages, which it said should not be annulled, for the children's sake, did take place from unavoidable ignorance ; indeed it is more than probable that the Act never would have been passed at all except to protect the expected issue of a certain noble family ; but society generally obeys that part of it which declares marriages of that description, which are unprotected by it, to be void.

ASSERTION XV.—Thousands of such marriages have been contracted ; they are found in almost every town and neighbourhood in the kingdom.

Remark.—This assertion is easily made ; but before we admit it, let the following statement by Vice-Chancellor Wood (Lord Hatherley) be considered :

‘I have myself inquired into the matter in the parish in which we are now sitting. The two parishes, indeed, of St. Margaret and St. John are united, as regards the relief of the poor : we have 60,000 parishioners, and about 26,000 of the lowest poor. Now, I have made inquiry of persons specially employed by the clergy and others in visiting the poor, and who have had great experience in so doing, and they tell me that they only know of one instance of marriage with a wife's sister amongst the poor of these parishes, and that the man is looked down upon by his neighbours. There are, however, two cases of men living with their own sisters ; and of course in such a parish you may meet with other instances of criminal intercourse. I contend that, if this case is to rest upon the position of the poor, it must be given up. My belief is, that the poor, of all others, retain the impressions of long-existing customs. They become deeply ingrained in their minds ; and an

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impression having once been made upon them that such marriages are incestuous, could with difficulty be removed. In England we have reason to believe this impression is strong; but in Scotland it is yet stronger. In truth the poor are more tenacious in such matters than the rich, and are less susceptible of those changes of opinion which civilization and luxury introduce.'

And with it, this extract from a letter by a clergyman who had been between sixteen and seventeen years in holy orders, which shows that, so far as his experience goes, cases of connection with a deceased wife's sister are by no means the most common sort of incest.

'In my experience I have met with cases of incest with—

Deceased wife's sister*	.	.	.	.	3
Wife's sister during wife's life, one a case }					2
too of double adultery . . . }	.	.	.		
Own daughters . . . . .	.	.	.	.	7
Own sisters † . . . . .	.	.	.	.	10
Own nieces . . . . .	.	.	.	.	6'

If we are to legalise a connection because it has been illegally formed, it is obvious that we must go much further than Lord Dalhousie's proposes to go, and further even than the original draft of Lord Lyndhurst's Act, which would have legalised the marriage of a man with his niece, proposed to go.

ASSERTION XVI.—The case of the children of such a marriage ought to be considered.

Remark.—It is of course a sad thing that children

* 'In two of these cases the guilty connection had been going on some time before they were, as it is called, married.'

† 'I believe this to be by far the most common kind of incest, owing to the crowded state of the dwellings of the poor.'

should be visited for the sins of their parents. But if they are to be considered in this instance, what is to be said of the children of other incestuous unions, or of illegitimate children generally, or of children who, through their parents' extravagance or vice, have a miserable inheritance of poverty or diseased constitutions? It is not man, but God, who has ordained the relation of the sin or the righteousness of parents to the condition of their children. '*I the Lord thy God am a jealous God, and visit the sins of the fathers upon the children, unto the third and fourth generation of them that hate Me, and shew mercy unto thousands in them that love Me and keep My commandments.*' (Second Commandment.)

ASSERTION XVII.—Society, almost without exception, regards such persons as rightly married, and worthy of respect, and in so doing condemns the law which renders their marriage void.

Remark.—This is simply not true. Thank God, society very generally regards such persons as *neither legally married, nor as worthy of respect.* It is a well-known fact, too, that marriages of this character have been in many instances contracted entirely against the wishes and feelings of the nearest relatives, for instance, the mothers of one at least of the parties.

ASSERTION XVIII.—Numerous clergymen of the Church of England have petitioned for the removal of this restriction.

Remark.—*Numerous* is an ambiguous term. The number of clergy who have petitioned for the removal of restriction on such marriages is utterly insignificant as compared with that of those, of all shades of theological opinion, who disapprove of its removal. The most learned and able of the Bishops have written, spoken, or voted against such removal.

On the occasions of the recent Divisions in the House of Lords, twenty-four out of the twenty-six Archbishops and Bishops having seats in the House, either voted or paired against the measure. One paired for it, and one neither voted nor paired. In every Diocesan Conference where the subject has been brought on, it has been almost unanimously condemned by both clergy and laity.

ASSERTION XIX.—Some of the most eminent Judges have voted for such a measure.

ASSERTION XX.—Some of the most distinguished of the Nobility have voted for such a measure.

ASSERTION XXI.—A majority of the Members of some of Her Majesty's Governments have voted for such a measure.

Remark.—Of course Judges, and Nobles, and Members of Government, are entitled to have their individual opinions on the matter ; but, supposing for a moment that no fallacy lurks in the word *some*, this is not a question to be decided by the individual opinions of *some*, however highly placed.

If, however, eminence and distinction *are* to be allowed weight, such Judges as Lords Campbell, Hatherley, Cairns, Coleridge, and Selborne, Mr. Justice Coleridge, and Chief Justice Whiteside, such lay Peers as Lords Shaftesbury and Salisbury, the (late) Duke of Marlborough and the Duke of Argyll, might be mentioned as having invariably opposed marriage with a wife's sister. It has never been made a Government question. The late Premier, Lord Beaconsfield, disliked it, and one of the best speeches ever delivered against it was by the present Premier, Mr. Gladstone.

ASSERTION XXII.—Numerous public meetings have been held in the principal towns of England, advocating the removal of the prohibition.

Remark.—To this Lord Campbell's remark, made some time ago, is applicable now. 'He should not be doing his duty unless he reminded their lordships of the manner in which this agitation was begun and carried on. They had had agitations upon the Reform Bill, upon the repeal of the Corn Laws, and upon other great political measures ; but he believed this was the first time that societies had been instituted for the purpose of changing a law resembling that of marriage, and where, purely for the purpose of personal interest, a great effort had been made to influence public opinion. He could not help saying, from the evidence that had been laid before him, that this agitation was begun by those who had violated the law, and that it had been carried on by them in conjunction with those who had entered into engagements which the law forbade. Let us see the manner in which it was conducted. They began by retaining counsel, by retaining solicitors, by sending lecturers over the country, by writing pamphlets, and by holding public meetings, at which their advocates spoke from the platform. And what was the topic with which they began? That, as the law then stood, these marriages of a man with the sister of his deceased wife were perfectly legal. And it was by having taught to the people of this country that these marriages were lawful that they had occasioned in many instances the law to be broken, and then they brought forward those breaches of the law as arguments in favour of now altering the law of marriage.'

ASSERTION XXIII.—The repeal of this particular prohibition leaves the Table of Degrees generally in full force. We demand no more than the removal of this one crying grievance.

Remark.—The Table of Degrees is a document founded

on settled principles ; consequently, if one portion of it is removed, its consistency is gone, and it must collapse. Remove one stone of an arch, and it falls. As for the promoters of the measure being satisfied with a single concession, see the remark already made on Assertion IX., and note these words which occur in a paper issued by the Marriage Law Reform Association, dated February, 1883 : *'If the Bishop of Oxford, and those who think with him, would vote for the second reading of the Deceased Wife's Sister's Bill, and in Committee move an amendment including the niece, it is believed that none of the supporters of that Bill would be found opposing him.'* And Lord John Russell said, February 17, 1859, not in deprecation of a Bill for legalising the marriage of a man to his Deceased Wife's Sister, but in support of it : *'In voting, therefore, for the second reading, I should consider the law utterly imperfect, unless you further alter it so as to make it equally applicable to both sexes, and to all the degrees of relationship which have been mentioned.'* It is evident, therefore, that Lord John Russell saw that if a man were permitted to marry his Deceased Wife's Sister, it would be impossible to pause. A woman must be permitted to marry with her Deceased Husband's Brother—uncles to marry their nieces, and aunts to marry with their nephews. In fact, that there would be nothing to prevent the most unnatural alliances.

Marriage Law Defence Union Tracts
No. XXX.

Marriage with a Wife's Sister

SPEECH

OF THE LATE

LORD HATHERLEY

(AS VICE-CHANCELLOR SIR W. PAGE WOOD)

AT A

MEETING HELD IN WILLIS'S ROOMS

On February 1st, 1860

THE DUKE OF MARLBOROUGH IN THE CHAIR

LONDON

MARRIAGE LAW DEFENCE UNION

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

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1883

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Marriage Law Defence Union Tracts.

No. XXX.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

What the late Lord Hatherley said

(As Vice-Chancellor Sir W. Page Wood).

MY LORD DUKE,—I have been requested to move the following resolution, it having been thought right by the Committee, that, after your Grace should have favoured the meeting with a general exposition of the objects of the Society, a layman should first invite their attention to the resolution which we hope they will be induced unanimously to adopt.

The first resolution is as follows :

That this meeting is convinced that any alteration of the marriage law which should permit marriage with a wife's sister, or any other person within the degrees now prohibited, would be fraught with great danger and injury to religion, morality, and family life.

I believe that I shall have the entire concurrence of the whole of this vast assembly in the general proposition here set forth, whatever may be the individual views entertained upon any one branch of the question. There is no one here present, I apprehend, who fails to see that there is great danger to religion, to morality, and to all the best interests of family life, if the measure contemplated, and which has been so pertinaciously put forward for two or three sessions, shall ever acquire the force of law. And

what is it that the advocates of this alteration of the marriage law are attempting? It is to uproot and set at nought the deep feelings and religious convictions of a vast majority of the people of England ; to overturn the moral instincts of others who do not admit the religious views in which many of us, indeed most of us, happily in England are accustomed to regard the question ; and further, to revolutionise and destroy family ties by breaking down social relations which have existed from the very commencement of society. It is no light occasion, then, upon which we are now met together ; and the numbers I see before me convince me that the people at large are beginning at length to understand and appreciate the importance of the question and the magnitude of the danger. I believe that it is only because those who desire to maintain the law—the vast majority of the population—have been too languid in their opposition to these repeated attempts to change it, that a measure so pregnant with mischief of every kind can ever have been passed by a majority of the House of Commons. But I do not believe, in spite of its having twice passed the House of Commons, that the people of England are in favour of any such alteration. I once had the honour of raising my voice in the House of Commons against this fatal measure, and am happy to say that on that occasion I was supported by men of all religious views and of every shade of political opinion. In that debate I heard the indignant eloquence of Mr. Shiel, a Roman Catholic member of the House, denouncing the measure, and the able advocacy of Mr. Roebuck, who could not, any more than myself, be regarded as entertaining high Conservative principles, brought to bear against it. But this is a matter in which every Englishman and every Englishwoman should be conservative ; for the question at issue is, whether we shall hold our religious principles intact, and whether we are to maintain those social

views which form the basis of domestic purity in their full integrity.

After having read almost every pamphlet which has been written, and heard very many of the speeches which have been made, on the subject, it appears to me that there are certain propositions which are incontestable. They are these : that the Church of England has ever held, and still holds, that these marriages are contrary to God's law, and that the Church of England, in so holding, only follows the truth as laid down by the whole body of the Church Catholic from the time of its first foundation 'on the apostles and prophets, Jesus Christ being the head Cornerstone.' Further, that the law of England has been uniform in holding, as the Church held, that all such marriages are contrary to the law of God ; for in express terms it was so enacted in the Act of Henry VIII. ; and I contend that those who wish to overturn that which has been sanctioned by the law from the first institution of society—and I now address those more especially who disregard the authority of the Church—that which has been sanctioned uniformly by law and by custom, have the burden cast upon them of proving that they are justified in making such a proposition. This resolution declares that to alter the law for the purpose of 'permitting marriage with a wife's sister, or any other person within the degrees now prohibited, would be fraught with great danger and injury to religion, morality, and family life.' As I hope to be followed by men of high authority in the Church—by my Right Rev. friend the Bishop of Oxford, by the Right Rev. Prelate the Bishop of St. David's, and others—my comments upon the religious part of the question ought to be brief. But we are met here not only to claim your religious sympathy, upon which I shall make some demand before I conclude, but to claim also the best exercise of your reason upon this momentous subject. I want to show that we are not afraid

to discuss it, be the adversary who he may, on grounds of the most deliberate reasoning, apart altogether from the religious ground, and as if everything connected with it were an open proposition. And at a time when it is considered an open question whether man derives his being from a sponge or an anemone, it may be advisable, in dealing with my subject, to go back to first principles. I am prepared to argue, therefore, with him who holds, as I hold, that the Scripture is the Word of God—with him who holds with me that the Church may rightfully expound Scripture; I am prepared, also, to argue with him who holds neither of those propositions; with him who says that the effect of the question on our social system is to be argued on first principles.

As regards what the Scripture says upon the subject of these marriages, I will be brief. But we rest our case on this fact, that there is recorded in God's Word a list of unions which are denounced as being abominable—not merely abominable according to the Jewish law—which was not then given, but about to be given,—but abominable on the part even of the Canaanites and the Egyptians, who had never received directly any revealed law, and yet were held guilty in respect of these abominations. That is our answer to those who say this prohibition, if it exist at all, is only a Jewish institution, and not binding upon others. The 18th chapter of Leviticus begins in this solemn manner: 'After the doings of the land of Egypt, wherein ye dwelt, shall ye not do; and after the doings of the land of Canaan, whither I bring you, shall ye not do; neither shall ye walk in their ordinances; ye shall do My judgments and keep Mine ordinances to walk therein; I am the Lord your God.' And it concludes: 'For all these abominations have the men of the land done which were before you, and the land is defiled. That the land spue not you out also when ye defile it, as it spued out the

nations that were before you.' Looking, then, to this exordium and to this conclusion, can we see anything less than a Divine Lawgiver pronouncing His blessing generally on those of all nations who obey His law, and His curse on those who reject it? In the enumeration of forbidden unions, there then occur a number of specific cases, many of these being cases of relationship by marriage, and not by blood only ; but the first opening of the whole law, as we find it in the 6th verse of the chapter, is in effect—'None of you shall marry any that is near of kin to you.' This is the keynote to all that follows. The law then shows who are 'near of kin' to us, and proceeds to mention more cases of affinity than of relationship by blood. This is a clear explanation of what is meant by the words 'any that is near of kin.' But I will further show that in enumerating the cases the law includes in each case the converse. Thus it says the brother shall not marry his deceased brother's wife. That is explicitly stated, and there are numerous other cases mentioned ; and then it is asked, Are you justified in the inference that the wife's sister is included in the prohibition, that being the converse case? Why, the affinity is the same, and the relationship is as near. But here is a conclusive argument. In this code, if you interpret it otherwise than by implying the converse case, there is no prohibition of the father marrying his own daughter ; the prohibition is only against the son marrying his mother. The justification, then, for our mode of interpretation is self-evident ; for, if not, there is no prohibition against the father marrying his daughter.

But then, say our opponents, pointing to the 18th verse, here is a verse which throws all into doubt and difficulty. My answer to that is, in the first place, To override a command which is distinct and precise, you must have a very clear verse and a very clear interpretation of that verse ; and, next, it is not too much to say that this verse, which is

said to give inferentially the right to marry the wife's sister, rather leads to the opposite conclusion. It is, 'Neither shalt thou take a wife to her sister to vex her, beside the other in her lifetime'; and it is argued that the words 'in her lifetime' give an implied permission to marry the sister after the wife's death. If the translation of this verse were clear and plain, I altogether deny the construction of it thus assumed. I deny that you can derive, as against a clear and direct prohibition, an exception not introduced as such, nor immediately following that prohibition, but merely by implication from words introduced in a subsequent and a new commandment. The prohibition of a particular kind of polygamy is not an exception from a distinct anterior prohibition of marrying, but a new statute. Then comes the question as to the interpretation. Now strong evidence tends to show us that the true interpretation is 'a wife to another wife.' That is the interpretation given in the margin of our translation of the Bible. The translators put an interpretation in the way of marginal note, when it appears to be reasonable and probable, although they have adopted the translation of the text; and, in all cases in which they so illustrate the meaning, they say you are to pause and exercise your judgment and discretion as to what is in the text.* As to the meaning of the passage 'a wife to her sister,' I will just refer to a statement contained in an admirable answer to Dr. McCaul's pamphlet, recently published by this Society [Tract No. 8], in which these words, translated here 'a wife to her sister,' are shown to be the Hebrew expression commonly used, not to denote consanguinity, but merely the adding one thing to another; so much so that the words 'a woman to her sister' and 'a man to his

* They explain this in their Preface, under the head 'Reasons warning us to set diversity of senses in the margin, when *there is great probability for each.*' See this clearly stated in the Bishop of Exeter's letter to the Bishop of Lichfield.

brother,' as meaning two things of the same kind, the one added to the other, occur in the Bible no less than forty-two times ; in thirty-two of these they are actually translated as one thing added to another, and of the other ten, in one instance only are they translated so as to denote anything but mere addition of similar objects. So that, if they mean consanguinity in this disputed verse, it is almost a unique instance of such meaning. I merely want to show you that this is a verse of very doubtful interpretation, for, according to all principles of construction of law—according to every code of interpretation that I know of, you cannot get rid of an explicit enactment by the interpretation of a subsequent passage of doubtful explanation. Now, we stand upon that ground, and I think it is a ground very firm and solid. But, I ask, how has it been, in fact, interpreted? Dr. McCaul tells you that the Jews—the orthodox Jews, the Talmudists—interpreted it in the way in which all those who wish these unions to take place contend for. It is rather singular that we, in these days, should be called upon as Christians to follow the Jewish Rabbis in our interpretation of Scripture, seeing that their interpretation is what was so decidedly denounced by our Lord in His Sermon upon the Mount. The object of this prohibition was to conduce to purity of life. The Jewish Talmudists liked narrowing God's law, whilst we are told by our Lord to extend it. 'The commandment of the Lord is exceeding broad.' The Jewish Talmudists wished to find an indirect sanction for polygamy. But, on the other hand, another set of Jews, the Karaite, who were strict interpreters, interpreted it as a prohibition of polygamy. They read the words as in the thirty-two other places of Scripture—'one wife to another,' not 'a wife to her sister.'*

*In a postscript to the tract above referred to, it is shown that Dr. McCaul's favourite authority, the Mishna, contains statements at variance with that gentleman's views ; for which, as well as for a most

Now, as to the Church's interpretation, Dr. McCaul says that nobody ever heard of any prohibition made by the Christian Church of this description of unions till about the fourth century. He is right. There was no prohibition until the time of Constantius, about the middle of the fourth century. They were not prohibited by positive law at the date of the well-known letter of St. Basil. But why were they not prohibited before amongst Christians? Because such things were not thought of. Show me an instance of any such union being recognised by any Christian Church until the dispensation given by Pope Alexander VI. to the King of Portugal, and then I will admit that you bring something like an argument to bear upon the question. You cannot show me any instance of such a union down to the period I have mentioned. But I can show you this—that centuries before this, and the moment such union was talked of or mooted in the Christian Church, the immediate answer was, 'It is against all our customs.' These are the words of the first extant passage on the subject. St. Basil, in the year 350, says—'We have no such customs here; it is against all our customs to allow such marriage; it is polluted, it is incestuous.' Therefore, I say that, from the very first moment it was broached, you have the voice of the Church against it. It was prohibited by the Christian Church as a thing incestuous, and contrary to the law of God. How, then, did it come about that the Romish Church allowed dispensations for these marriages? Simply from the growing corruption of that Church. She added fresh prohibitions to the Word of God in this as in many other instances, and then took upon herself to dispense; but it was a long time before she ventured to dispense with this portion of God's Word. After a time, growing bold, interesting exposition of the law (exactly agreeing with what we hold, and for the same reasons) by the great Rabbi Maimonides, *see* Appendix.

II

and finding pecuniary advantage in the payment exacted for these dispensations—and the amount of payment was always measured by the degree of incest—then she granted dispensations, and the number of these marriages increased. We have an instance in the days of Louis Quatorze, where 20,000 livres were paid to the Church for permission to marry a deceased wife's sister.* We are told, however, that the Jewish Rabbis and the Roman Catholic Church interpret these things differently from our own Church : therefore, our own Church must be entirely wrong. I feel that I have dwelt longer on this religious part of the question than I ought to do, and my concluding observations on that point shall be brief. With regard to this particular matter of dispensation for marrying a deceased wife's sister, the first that was granted was that which I have already alluded to—the dispensation granted by Alexander Borgia, towards the close of the fifteenth century, to the King of Portugal—a dispensation granted by a man who lived himself in gross incest—that Pope whose name is an abomination in the ears of every Christian man. But the Church of England was firm, and at the time of her reformation, casting aside all the traditions and human figments which had been mingled with God's law, adhered to the Scriptures ; and in her 99th Canon sanctioned the Table which laid down the prohibited degrees taken from Leviticus, including especially the degree now under consideration, as well as the converse case of the brother marrying the brother's wife. But is the Church of England singular in this? Some persons may not be willing to adopt our Church's view of the question. But how does the Presbyterian Church of Scotland decide? In the year 1643, the Assembly at Westminster (an assembly of divines who well weighed the

* This was the case of the Marquis de Sailly. The Parliament disregarded the dispensation on an 'Appel comme d'Abus,' and held the marriage to be illegal.

Scriptures—indeed, there never was a time when the Scriptures were more seriously and anxiously examined than at the time of the Great Rebellion or Great Revolution, whichever it may be called) discussed the prohibited degrees ; and what was the resolution to which they came? ‘A man may not marry any of his wife’s kindred nearer in blood than he may of his own, nor a woman of her husband’s kindred nearer in blood than she may of her own.’ That is the interpretation of the Kirk of Scotland on this 6th verse, which says you shall marry none that are near of kin. That is the exact view which has been sanctioned by the Church of England. The Kirk of Scotland and the people of Scotland have been faithful to that teaching, and are so determined on the point, that, if you will follow their example, the Bill is gone. In every Bill that has yet been introduced they have been obliged to except Scotland ; and I ask you to rouse yourselves, to show the same front as the people of Scotland have done, and say, ‘We are not less religious than our forefathers—we are not less pious than our Scottish brethren.’ If last year’s Bill had passed the House of Lords, we should have been in this predicament—that a Scotchman coming to England might here marry his wife’s sister ; and going back to Scotland, he would have been a single man in the eye of the Scotch law, and might have married whom he liked. So much for the religious part of the question.

I now take up the second branch of the subject, and proceed to the morality of the question. It is a grave and serious matter, and I know it is an unpleasant question to discuss. Our adversaries have relied upon this, and have thought we would not venture upon holding a public meeting to discuss a question the details of which might offend the natural delicacy of female ears. But it is a question in which the female part of the population is especially interested, and I trust we shall be able so to deal with it

as to give offence to no one present. As to the morality of the case, the strong ground of our opponents, as they think, is this : The prohibition is not in God's law at all ; and, further, a large portion of them say that the whole of that chapter of Leviticus has nothing to do with us as Christians, but relates only to the Jews. That is one proposition. The next proposition they maintain is this : Marriage is in itself a thing so sacred and favoured by the Almighty, that, unless you find an express prohibition in God's law, man has no right to prohibit it. Put these two propositions together, and what is the result? General intercourse is free. A man may marry his daughter, he may marry his sister, or any one else, because there is no revealed prohibition. Can that be? There is a moral instinct—there is a moral law—I mean that power of deciding what is right and what is wrong that is given to the heathen—not in the same degree, no doubt, as to us—but a light which they are to walk by until a better is given to them. The Romans, the Greeks, and other civilised nations, were not without a moral law on this subject. If you cannot prohibit these marriages except by revelation, how did the Romans and the Greeks prohibit them? We find that they had their prohibitions—not identical with those in Scripture, but such as they had they adhered to scrupulously. Why were the Egyptians or Canaanites to be condemned, if there were no moral law independently of revelation? St Paul says of the heathen, 'They show the work of the law written in their hearts, their conscience also bearing witness, their thoughts the meanwhile accusing or excusing one another.'

The first thing to consider is this : Let the prohibition be once laid down, it ought never afterwards to be thought of or discussed, because it is a subject of so delicate a nature that the moral instinct should not be shocked. The way that instinct is formed is this : A nation has, first, a sentiment of revolt against such unions, which is afterwards

embodied in a law, and, when once that law has sanctioned the instinct, the question should never be again opened. In the matter of incest, we rely on an instinctive, upon a total, revulsion of the mind ; even the possibility of doubt is a most perilous state to be in on such a question in regard to our social life in general. It is that subject which, once settled, should never be tampered with. It is a part of every man's life. It is a portion of every man's creed. Our social relations are founded upon it, and woe to the man who attempts to shake every moral conviction, every moral instinct, by mooted a question of this odious and revolting character after it has once been deliberately settled. The law and the Church having sanctioned it, it became a part of every man's life, and consequently our sister-in-law is our sister, and that is a name and a relationship which, God permitting, we do not intend to lose. She is our sister in every respect. Who that has ever been married has not felt that, when he has formed a union with the woman of his choice, the atmosphere of love which he experiences in his heart towards her he has taken to his home spreads itself out collaterally, envelops all who are connected with her in the same way that it does those who are connected with himself? Her relations become his relations. She is blood of his blood, bone of his bone, and flesh of his flesh. All her blood relations are his relations. He welcomes them to his own heart and his home. I asked a gentleman who entertains a strong contrary opinion upon the subject, Can you tell me honestly that any man in England treats his sister-in-law in the same way as any other lady of his acquaintance? Is not the relation of sister established in all their conduct and all their intercourse? He could not deny that it was so. I then said, You must destroy that relationship before you give even a thought to the alteration of the law which you propose.

But our opponents sometimes venture on a very bold

proposition, viz., that the prohibitory law is a new law. I have here a pamphlet, called *Facts and Opinions*, which has been largely circulated by those who entertain the opposite view, and all I can say of it is, that it seems to be a singularly happy exemplification of Mr. Canning's remark, that nothing is so deceptive as figures, except facts. It is here stated that such marriages were virtually permitted before the year 1835. Now, I state, on the highest judicial authority—that of the House of Lords—that such marriage was never lawful before 1835—was always unlawful, always void by the law of England. But the only remarkable point was this—and it certainly is a singular one—that the Ecclesiastical Court alone having the power to *declare* such marriages void, had not the power to entertain any suit which would affect the issue of any incestuous marriage after the death of either of the parents. That was the only difficulty that existed. The same rule exactly would apply to a marriage between own brother and sister, or father and daughter. But was it not void? Within the last year the very case has arisen, and it was decided in July last on appeal in the House of Lords. The case was this. A Scotch gentleman, having property in Scotland, but domiciled in England, had married a wife's sister in 1808. That was before the law of 1835. The wife died, and afterwards, when he died, the Scottish heir claimed his property. There was a child by the unlawful marriage. The legitimate or lawful heir denied the right of such child, and set up his claim, and the question arose whether it was a void marriage, or only a voidable one. There was the whole point; for if it was not void, the child of the marriage would have succeeded to the property. The judges who heard the appeal were Lord Brougham, Lord Wensleydale, Lord Cranworth, and Lord Chelmsford, and they decided that the law is as I stated it to be, and that the marriage was not only voidable, but void. Lord Brougham said: 'First let us con-

sider if the marriage was lawful in the country where it was contracted—which was England—and where both the parties had their domicile. It was clearly illegal by the law of England, because that law treated all such marriages as incestuous.* This shows the value of this proposition—the fact, as it is called, No. 13, in *Facts and Opinions*—namely, that these marriages were lawful in England before the Act of 1835. I think it very important to give a caution on this point, for these persons have done a very cruel thing towards many women. They issued circulars and advertisements stating that, by the decision of Lord Stowell, a marriage, good according to the law of the country where it is celebrated, is good everywhere, and then added, that by the law of Denmark such marriages were valid. Now, I call that a most cruel deception, and I believe that many an unhappy woman has been deceived and rendered miserable for life by the publication of that statement. For after the Sussex Peerage case it was well known that a marriage prohibited by the law of the country of which the parties were subjects, is an exception to the rule laid down by Lord Stowell.†

I say then, lastly, as to our family life, that having the law thus established, and having this course in our families, surely the matter is deeply important, far beyond the change

* The case is *Fenton v. Livingstone*. *Jurist*, 1859, p. 1183. All the judges explain the law as above stated.

† The *Globe* and the *Daily News*, in their leading articles, with reference to the meeting at which this speech was delivered, actually assumed that, until Lord Lyndhurst's Act, the marriage in question was legal, and made that a basis of their argument, showing how the grossest blunders will be believed if only stated often and boldly enough. If Lord Lyndhurst's Act were repealed to-morrow, the marriages in question would be just as illegal as that between a father and daughter, neither more nor less so, though the children of either union could not (in England) be declared illegitimate after the death of either parent. Lord Lyndhurst's Act mercifully prevents a woman from being entrapped into this false position.

now asked for, because, when once the theory is mooted, when once you allow it to be argued, the whole question is open, and there is nothing to prohibit other marriages within the prohibited degrees of affinity, as the marriage of the uncle with his niece. It is impossible to say how far we may be called upon, or where is the degree of blood at which we are permitted to stop. Are we to have polygamy? The example of foreign countries has been referred to. We are told that Massachusetts is a moral country, and that the law there allows a man to marry his deceased wife's sister. But, if that is to be an argument, why not go to Utah for an example, where polygamy is allowed? Let us come then to family life, for we ought to argue the question out fully and logically. The proposed alteration in the law will introduce into every home in England a new rule, and have a most injurious effect on family life. The custom of English life is, that a young man and a young woman cannot live alone in the same house if they are capable of intermarrying. I know several excellent young women, the sisters of deceased wives, who are living with and comforting the husband of their deceased sister, because they know that marriage is now impossible. But, if the proposed change should be effected, all these women will have to leave their present homes unless they marry their brother-in-law. And what is the argument used on the other side? It is said that an aunt is the best guardian of a deceased wife's children. But are they not guardians now, and will not the proposed change prevent them from remaining guardians? As Mr. Roebuck pithily remarked in the House of Commons, 'a sister is the best guardian of a deceased wife's children, but making her a stepmother would not make her a better guardian.' There are many high-minded, pure-minded women who will not dream of entering into such a contract, and who, therefore, will be under the necessity of deserting their present homes; whilst the lady

who agrees to such a marriage might have children of her own, and will be tempted to take care of such children instead of those of the former wife. Why, I may ask, is the husband's sister a less fit guardian for his children? On which, a word more presently.

Our opponents tell us that the poor desire this change, and that it is a poor man's question. Now, if ever there was an untruth, this is one of the greatest. The fact is, that some twenty years ago certain gentlemen got themselves into a difficulty by marrying contrary to the law, and employed two solicitors to stir in the matter, and that was the origin of the movement. That they may have talked some poor men into their view, I do not deny. But the poor are the longest in maintaining fixed impressions. They are impressed with the sanctity of the marriage law as it stands, and we know that the poor do not lightly change. Taking the *à priori* view, even if it is an advantage to the poor man to have his wife's sister to look after his family, we find that the almost universal rule is for the girls in poor families to marry as soon as they are marriageable, or to go out as servants to earn their living. It seldom happens, therefore, that the poor man has the chance of having his wife's sister in the house to look after his family, and of afterwards placing her in the position of his deceased wife.* I know something of one of the poor districts of this metropolis, and have taken some pains to ascertain the feelings of the poor on the subject. In the parishes of St. Margaret and St. John, I instituted inquiries, and found only one case of such union, and in that case the parties who had formed the connection were universally looked down upon by their neighbours; but the inquiry disclosed

* Mr. Beresford Hope, in his able speech, showed that, taking the statistics collected by the two solicitors of these marriages, and of marriages hindered—or prevented, as they termed it—by Lord Lyndhurst's Act, there were 1608 of the rich and middle classes, and forty of the poor.

other painful statistics of other unions which were found to exist ; this I mentioned in the House of Commons. A City Missionary afterwards wrote to the *Times* and said that he had found two other such cases in the parishes of St. Margaret and St. John. Well, admitting it to be so, there are three in a population of upwards of 40,000, and in the one I discovered the parties, as I have told you, were looked down upon by all their neighbours. A clergyman wrote to me and said, 'I assure you that many of the poor earnestly desire this change.' I replied, 'I only want to come to the truth ; send me their names and residences.' I never heard another word from him. I believe, that, if we were to go through the whole of the case which has been got up by these two solicitors, it would be found that is only a small portion of the rich middle class, and not the poor, who desire this change in the law. I believe that in the West Riding of Yorkshire a great many persons take that view, but I do not believe that to be the case in any other district in England. If the poor man does receive a wife's sister to take care of his family, no doubt evil may come of it. But this arises from the wretched condition of his home, and such evil has happened accordingly where the poor man's own sister has been taken home to look after his family.*

Then it is said that a great many people desire to form these unions ; but is the idiosyncrasy of forty, fifty, sixty, or a hundred, or a thousand if you will, to override and upset our long-settled deep religious conviction, moral feeling, and social institutions ? And who are they that ask for this change ? Why, the people who have broken the law. In all other cases it is not usual for Parliament to legislate on the ground that the law has been broken. It is no

* One clergyman made a return of *three* poor men living with their wives' sisters, and *ten* with their own sisters, in the same district, unlawfully cohabiting in each case.

ground for altering the law, that certain people have broken it. If they had asked for the law to be changed before they had broken it, they might have been entitled to more attention ; but when they have committed an offence, they have no right to ask for such alteration in the law. In the collection of evidence that has been published in support of the change, it is stated by one of the barristers employed that he knew a most respectable gentleman, who kept his carriage—I suppose that was the test of his respectability—who, because the law was as it is, lived in concubinage with his wife's sister, and yet was not looked down upon, because the law prohibited him from marrying her. Is that the morality we are to adopt? If any ladies have been deluded into such marriages under the influence of the advertisements that have been put forward by the advocates of this measure, I sincerely pity them ; but that is no reason for altering the law. One word more. It is our apathy alone that has allowed the question to advance to such a stage, that but for a majority of only ten in the House of Lords the Bill would have become the law of the land. On that occasion we had the support of only eight of our bishops. I trust on the next occasion we shall have the support of the whole of the Episcopal Bench—at least those who have not committed themselves on the question. None ought to oppose us, and thereby put the Church and the State in opposition, for I believe that not one of them has yet moved the repeal of the 99th Canon ; but we want your power in every way, coming forward as you have done to-day, to say that the thing shall not be done. A friend of mine smiled when I said the other day I would rather hear of 300,000 Frenchmen having landed at Dover than of the passing of this law ; but, I answered, I knew that we should soon get rid of the Frenchmen, but, this law once passed, it was impossible to say that we should ever get rid of its consequences. Just at the decline of the Roman Empire

exactly the like case happened. In the decline of Rome, when her ancient austere morals had been sapped, and Claudius, the third Emperor, was on the throne, he took a fancy to marry his niece, a marriage which was forbidden by the Roman law. At first, so strong was the popular feeling against it that they scarcely dared to mention the subject, but a few parasites began to whisper it about gradually, to accustom the people to it ; and at last it came before the Senate on an address made to them, which was almost word for word the same as the arguments of those who now demand this great change in our own law. If you read the speech, which is put pithily by Tacitus (which I once read in the House of Commons), you will find that the effect of it is—This is an old story ; our ancestors who made this law were not enlightened men like us of the present day ; they once objected to cousins intermarrying ; marriages ought to be free. Foreigners don't think as we do. Every one of these arguments was urged upon the Senate. The result was, that the Emperor succeeded—the law was passed—and he married the lady, who afterwards poisoned him. That was in the decline of the Roman Empire, and I call attention to it because I believe that this present movement is a sign of the moral decline of this country. If we allow our morals to be sapped in this direction—if we do not stand firm on our religious, moral, and social institutions with regard to the intercourse between men and women—we shall be lost. See what has already been developed by our Divorce Court. I don't speak of the remedy—it may be good or bad—I speak of the evidence that Court affords of the festering disease—the proof how our morals are being sapped at this moment. We are told that America does this, and that Germany does that. America sanctions divorce because people do not like each other, and Germany the same. Is that to be our own law of divorce? Is a man to marry one woman this year, and

her sister the next? or is the 18th verse of the 18th chapter of Leviticus to meet that special case? Well, are respectable uncles to fall in love with their nieces, and then ask us again to change the law? If you look to all these questions seriously, you will find, that as in the decline of the Roman Empire the Romans who had seen the Gauls in their city, and allowed it to be sacked, but still upheld the life of Rome by her Senate—who had seen Hannibal at their gates, and had ventured to give the full price of the ground on which his army was encamped because they believed in their own moral strength—you will see the same nation in the reign of the Emperor Claudius, when, instead of having their empire circumscribed by their own walls, as in the time of Hannibal, they appeared to be ruling the whole world, as we are now ruling India, and Canada, and Australia—you will see them, for the first time, tampering with their old moral code of marriage law. Then their morals began to decay, and the doom of Rome was sealed; and if we do not firmly, resolutely, earnestly maintain the morals of this country, a greater and more appalling calamity will fall upon us—for which our descendants will, indeed, have reason to curse us—than anything which has befallen the country before, or can befall it in the direst shape of physical disaster.

APPENDIX.



The following interesting extracts are given from the Tract referred to in a preceding note. The passages from the *Mishna* afford singular support to the view which the Bishop of Oxford, at the late meeting, stated to be held by some divines in America, viz., that the difficult 18th verse of the 18th chapter of Leviticus was in fact a special prohibition against a wife's sister being married to her brother-in-law, even when the exceptional *levirical* law (or law by which the brother-in-law was to raise up seed to his deceased brother) might otherwise have appeared to supersede the general code of the 18th chapter.

After all that Dr. McCaul has asserted, is it a fact, that, putting aside the Karaites, the Jews were consistently in favour of marriage with a deceased wife's sister?

I. What says the *Mishna*, which has been quoted by Dr. McCaul himself?

It has a whole section (lib. xiii. Yebamoth) on the obligation which the civil law of the Jews imposed upon a man to marry his deceased brother's wife and raise up seed to his brother, in certain cases.

Dr. McCaul ought to have known, or, if he knew, ought to have said, first, that in chapter i. and also in chapter iii., sections 7 and 9, it is declared, that, *if that brother's wife is his own wife's sister, he may not marry her*; and, secondly, that the examples there given prove that this prohibition was considered to hold good *after* his own wife's death. And the reason assigned is, that *the man and his wife's sister* are related *within the degrees forbidden by the holy law* to intermarry.

The examples given in the two places just cited may be stated thus :—

A, B, and C (three brothers) marry respectively M and N (two sisters), and S, a stranger. A dies and C marries the widow M ; then N dies, and also C, who leaves behind him S and M ; *then B may marry S, the stranger, but not M, because she was sister to his former but deceased wife N.*

A and B (two brothers) marry respectively M and N (two sisters). A and N die ; *then B the survivor cannot marry M the survivor, because she is the sister of one who was his former wife.*

Of course the Mishna has statements bearing the other way ; but this only proves the inconsistency of this legendary compilation, and its uselessness for Dr. McCaul's purpose.

I have now done with the Mishna.

II. But what says *Maimonides*, a Spanish Rabbi of the 12th century, whose book (*More Nevochim*), embracing the interpretation of the laws of Moses, is one of authority and general reputation ?

Dr. McCaul ought to have told us this. I will supply his omission.

Maimonides, then, says expressly, that the marriage of *a man with his wife's sister*, and that of *a woman with her husband's brother*, are parallel or *analogous cases*, and forbidden on the same ground, viz., *that of nearness of relationship* : at the same time he finds a reason for the prohibitions of Leviticus xviii. generally (including these cases) in the fact that the *persons forbidden* are such as are liable to be much thrown together by *family intercourse*, and to live under the same roof as blood relatives.

(I quote the English translation by Dr. Townley, A.D. 1827, ch. 24, Precepts of the 14th Class, p. 318, &c.)

It is obvious from this that the doctrine of analogy is not unknown to Jewish interpreters.

Marriage Law Defence Union Tracts.

No. XXXII.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

What the Right Hon. Lord Selborne said in the House of Lords, March 13, 1873.

THE LORD CHANCELLOR : This is no party question. It is, however, a question which affects society in general—not only those who ask for a change in the law for their own particular benefit, but equally those who do not want the law changed. Before I say anything as to that which is the first proposition of the Bill—namely, the expediency of amending the law respecting marriage with a deceased wife's wister—I will follow the example of my noble friend who has just sat down,* and make some observations on the Bill itself, which a great number of those who have addressed the House have not paid much attention to. The Bill does not attempt to follow up its own principle to its proper limits, or to reconstruct the law of marriage on any consistent or symmetrical grounds, and consequently it will pave the way to further agitations and further changes. The duty of the office which I still hold obliges me to say that I think it is hard to conceive a more dangerous, a more alarming invitation to systematic, deliberate violation of the law than that contained in the first clause of the Bill. See how the matter stands. Down to the passing of Lord Lyndhurst's Act these marriages were, and

* The Earl of Dudley.

always had been, illegal—as illegal as they are now—and I was surprised to hear some of the old misconceptions on this point revived by the noble lord who introduced the Bill. However this may be, after the passing of Lord Lyndhurst's Act all possibility of misconception about the law of marriage was at an end. From that time forward, at least, it was known to all men that every such attempt at marriage—for marriage it is not—was prohibited and absolutely void. What said the right reverend prelate who just now so ably addressed your lordships? * He could see no difficulty whatever in the question which appeared so distressing to his right reverend brother †—‘What answer am I to give to any woman who, after this Bill is passed, wishes to marry her deceased husband's brother, or to any man who desires to marry his deceased wife's niece?’ ‘Oh,’ says the right reverend prelate (the Bishop of Ripon), ‘there can be no difficulty about the answer. Tell them to obey the law as it stands while it is the law.’ And yet the same right rev. prelate is going to vote in favour of a clause which says that no marriage heretofore contracted in violation of the law shall be, or be deemed to have been, void. What will be the value of such admonitions from right. rev. prelates to persons troubled in their consciences, if such persons are told in one breath ‘you must respect the law while it is the law,’ and in the next breath the same right rev. prelate comes here and says, ‘I am prepared to vote in favour of those who have not respected the law, so that every one of these illegal marriages shall be declared good from the beginning.’ Will not persons be encouraged by such legislation to disobey the law, and get up societies in order to induce the Legislature to sanction further disobedience? Are we to say that a certain amount of perseverance in systematic disobedience to the law will not merely induce Parliament to alter a law, which might in some instances be right, but to pass an Act, not of indemnity, but of *ex post facto* justification, in favour of the whole body of law-breakers for many years past? To pass such an Act, repealing the law retrospectively in favour of all

* The Bishop of Ripon.

† The Bishop of Oxford.

law-breakers, is really to tell the people 'you are under no obligation to obey the laws.' But the matter does not stop there. Every clause of the Bill is more and more monstrous as we go forward. What is the next clause? It is felt that, if you simply passed an *ex post facto* law legalising all these marriages, you might be marrying over again people who had contracted such unions, but who had since repented and married somebody else. It is provided, therefore, that the Bill shall not invalidate any legally subsisting marriage in order to restore the former illegal one. But everybody else who, having repented of breaking the law, and having treated the marriage as void, has separated from the person who never was his wife, shall be married compulsorily by the Bill to that person. Is that the sort of legislation of which your lordships will approve? You not only give to the law-breakers themselves everything they ask, but you say that persons who have regretted their disobedience of the law shall be forced back into their original illegal relations. Then another difficulty presented itself to the framers of the Bill. What are we to do with respect to rights of property, vested and expectant? You cannot take away from a remainder-man that which by law belongs to him. There may be remainders vested in expectancy in real or personal estates under settlement. If there was a daughter of the first marriage of the deceased sister, she would be entitled in remainder to settled property, whether real or personal, in preference to any sons of the sister whose marriage you are asked to legalise; and all the children of the first marriage, or even uncles, nephews, or cousins, would take a succession exclusively of the issue of the second marriage. It would be otherwise if the issue of the second marriage were legitimate. So the Bill says that all existing equitable and contingent rights shall remain the same after the passing of the Bill—in other words, that, while for some purposes the children of these marriages will be recognised by the law as such, they will not be so recognised for other purposes. They are to be still illegitimate as regards estates under settlement; but in other cases they are to be legitimate; so that you establish them in inconsistent relations under the same Bill. I think

I have said enough to show that if your lordships should at any time be persuaded, contrary to my own conviction, that the main principle of the Bill is right, you must set to work to give effect to your wish in a totally different manner. You must not by retrospective legislation try to render legal that which was not lawful and cannot properly be made so. You must consider how far your principle ought to go, and I am sure you can never stop short of the abolition of all marriages of affinity. If so, let the existing prohibitions be removed in an intelligible and consistent measure. Do not let us have piecemeal legislation concerning so important a matter for the mere purpose of giving to persons who have broken the law the same relief as if they had obeyed the law. I will now, with your lordships' permission, say something as to the main principle involved in this question. I have said that all members of society are interested in it—not only those who have married or are wishing to marry their deceased wives' sisters, but those who have not done so, and are not desirous of doing so. Every married man whose wife has sisters has an interest in that condition of society which is produced by the state of law which makes his wife's sister his 'sister-in-law.' Our popular expression exactly hits the principle. The law makes the wife's sister his sister, and if you alter the law the wife's sister for domestic purposes will be his sister no longer. Do you want prohibitory laws against marriage within any degrees of relationship or do you not? I think so. It is necessary and important so to fence round the sanctity of the domestic hearth upon the subject of marriage as to make safe and secure, as far as law can do so, the unrestrained and peculiarly affectionate intercourse which ought to exist for the happiness of families between the closest and nearest relations. If the principle be a right one, of course it extends to all the immediate members of one's own family. We know that the brutal passions of some of the lowest order of mankind are capable of overleaping even the natural barriers which exist between parent and child, between brother and sister. But as a general rule the repugnance to such unnatural relations is so great that they would be rare even if no prohibitory laws existed. When, however, you

pass from these closest relationships, everybody feels that legal prohibitions are necessary and salutary. The moment you go a little further in the circle of relationship, the power of the prohibitory law becomes stronger, because, the more remote the connection, the more important it is to fence it. Take the case of uncle and niece. We know that in some countries dispensations are granted for such marriages ; and there the principle of such unions being admitted, men are not restrained by natural repugnance from forming them. You want a fence in such a case. You want it peculiarly in cases of affinity, for the very reason that in those cases the natural repugnance is less strong. But the question is asked, 'Do you want any prohibition in cases of affinity at all?' Surely you do. Is not the wife to associate in your home with her sisters, and her mother, and her daughters, on the same footing as before? Or do you wish that marriage shall make a difference in the position of the wife and her sisters, when she feels that one of them may become the possible wife of her husband? So with regard to the husband's brother. Is he to be only a brother to the wife, or to be looked on as a possible husband to the wife? The truth is, that the husband and the wife are so united that you cannot make their intercourse with their own brothers and sisters really sisterly and brotherly—you cannot make it unrestrained—unless you apply the same rule to both of them. That is the principle on which the law has proceeded, and I say it is a most wise and salutary law that you should carry the fence as far in favour of the relatives of the wife as of the relatives of the husband, so that the two may be thoroughly identified, and the intercourse which is perfectly unrestrained as to the one, should be equally unrestrained as to the other. Is it possible, and would it be safe, that a husband should treat a wife's sisters as his own if he were allowed to marry them? And would not children suffer as well as husbands and wives? What is the real meaning of the argument that wives' sisters would prove the best step-mothers the children could have. It means that the wife's sister is the children's aunt, and is likely to bear them a closer affection than a stranger. Nothing can be more true, under a law which does not

invite her to become their stepmother. But, if you alter that law, you will deprive the children of the unrestrained and familiar affection of every unmarried aunt who thinks it wrong, or who is not willing, to marry their father. They are not now so deprived even during the widowhood of the father. Most of us know cases in which the wife's sister now lives in the same house, and takes care of her sister's children, without suspicion or reproach. But this could not continue under the present Bill. It is impossible that a woman can occupy the position of a sister and at the same time be by law a marriageable person. Our divorce law says that in a case of adultery with a wife's sister the husband shall not be capable of marrying again. I should be sorry, whatever the marriage law prescribed, to see it otherwise. These are good solid reasons, of a social and natural character. Some arguments have been submitted to your lordships based on religious considerations. One noble lord has sought to establish it as a fundamental principle that no marriage can be prohibited except the prohibition can be directly supported by some text in Scripture. But how would that noble lord, in accordance with that principle, prohibit polygamy? Certainly not from that particular text in Leviticus upon which he relied for his argument, because that text, as he interprets it, seems to contemplate marriage during his wife's lifetime with some person other than his wife's sister. Opinions have been forcibly expressed by some in favour of polygamy, and one author, not a bishop indeed, but a popular clergyman and the brother of a bishop in the last century, has traced many of the present evils which trouble us to its prohibition in this country. We are told how well marriage with a deceased wife's sister answers where it has been tried. But the same thing has been said of polygamy; and I think the statement is of about as much value in the one case as in the other. When a measure similar to this was before the House of Commons some years ago, I read an extract from the *Times* citing the following passage from the *Chicago Tribune*. Your lordships will notice the glowing colours in which the writer paints the happy results of the introduction of polygamy into Salt Lake City :

But about the practical operation of polygamy, as you call it. That is what you most probably want to know, and I shall enlighten you, from my observations and experience. When I came to Deseret there were not many who were in the enjoyment of more than one wife ; and many, or most, of the new comers were opposed to it. But as they saw how beautifully and harmoniously those families lived where there were two or more wives, their prejudices gradually gave way, and among no class was this change more apparent than the women. At the present time, if a vote were taken on the subject, I venture to say that nine out of every ten women who have lived here two years would sustain our present social system in this particular.

I do not want to compare the morality of other countries with the morality of our own. We comforted ourselves with the belief that respect for the sanctity of marriage stood high in this country until the Divorce Court was established. We cannot speak quite as complacently now ; but marriage is still held among us to be honourable. How is it that marriage in some other countries is less respected ? Do we not know that the facilities for divorce in some of those countries depreciate the estimation in which the marriage vow is held ? It would not be right to press the argument based on the Scriptures too far in an assembly such as this, because there are some outside who would decline to argue the question on that ground, discarding religion and refusing to admit the authority of the Scriptures. But, if we are to prohibit only such marriages as are prohibited by the letter of the Old Testament, we must repeal the prohibition in the case of thirteen degrees prohibited by our law and not prohibited by the letter of Leviticus ; and, on the other hand, if you endeavour to arrive at the principle contained in that chapter in Leviticus, and to lay down a marriage law in accordance with that principle within the range and limits of the degrees which are prohibited there, you will arrive at our present marriage law. There is one other very important point. We have been told that this is a poor man's question, and that the poor ask for this alteration of the law. My information does not support this. In 1859 I received, through an eminent prelate, a number of letters, which I have in my hand, from clergymen who had laboured many years in some of the largest centres of population. These clergymen assert that in their experience the

poor did not generally practice or approve these marriages. One of those to whom I allude is Dr. McNeile, the present Dean of Ripon, for many years a well-known clergyman of Liverpool; another is Canon Stowell, for several years a leading clergyman of Manchester; another is Canon Auriol, of St. Dunstan's; another is the Rev. Mr. Rowsell; and there was also a layman, a Scripture Reader, who laboured among the poor in London for a great number of years, some of whose words I will read to your lordships. To the same effect was the testimony of a right reverend friend of mine, the Bishop of Rochester, at that time Rector of Kidderminster. The Scripture Reader of whom I have spoken, writing in April, 1861, says:

Being in daily and constant association with the labouring and poorer classes; as one living among them, and being in their homes in the most poverty-stricken neighbourhoods; intimately knowing hundreds of the families of the superior working men, and also of those in the deepest poverty; being in the habit for years past of daily teaching many of the children of the very poor, and also being gratuitously occupied, and counting it a great privilege, in reading . . . every Sunday to upwards of 200 men of the labouring class, I know from my own observation and conversations I have had with many on the subject of the proposed Bill that the marriage with the deceased wife's sister is not approved and is very rarely to be met with among them.

My noble and learned friend (Lord Hatherley), having taken great pains to ascertain the facts among the poor of Westminster, has borne the same testimony. If we were to bring together all the aberrations of our law in matters relating to the connection of the sexes we should no doubt have a very alarming and very lamentable catalogue of evils. But does any one suppose that by adapting our law to such a state of things we should not produce a greater amount of mischief? For these reasons, my lords, I earnestly entreat you not to agree to the second reading of this Bill.

*To be had at the Offices of the Union; also of E. W. ALLEN,
4 Ave Maria Lane, E.C.*

Marriage Law Defence Union Tracts.

No. XXXIII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

*What the
Right Hon. W. E. Gladstone said
in the House of Commons, May 9, 1855.*

SIR,—My hon. friend concluded his speech with the enunciation of a principle in which I for one am disposed cordially to agree—namely, that we ought to be on our guard against making our own peculiar convictions a compulsory basis of action for others. But the whole, or at least a large part, of the question at issue in this debate is this: Whether those who support this Bill are justified in stamping the principles embodied in our marriage law, which are now sought to be shaken, with the name of ‘peculiar convictions.’ I ask, are those principles mere individual opinions—mere constructions of the Divine law which have been left to be debated as open questions, with no clear and determining evidence to guide us as to the path in which we should walk, and which this House is competent to set aside? My hon. and learned friend, the member for Plymouth (Mr. R. Palmer), in his admirable—I might almost say incomparable—speech, laboured to show, and did show, with a success which my hon. friend who has just sat down did not attempt to deny, that the principles advanced, and the arguments used in support of this Bill, if they are good for anything, are good for infinitely more than the purpose for which they are urged. My hon. and learned friend proved, most conclusively, I think, that every word that can be said against the application of the Divine law to the prohibition now proposed to be removed, and against the construction which by almost universal consent of Christendom has been put upon that

Divine law, might with equal justice be urged in support of polygamy; and I would appeal to the hon. member for North Warwickshire (Mr. Spooner), and ask him to point out in what particular the arguments against polygamy are one bit more conclusive than those which could be urged against the marriages which the measure before the House has for its object to legalise? The only answer which the hon. gentleman, the member for Kidderminster, has given to the argument on that point of my hon. and learned friend the member for Plymouth, was this—that my hon. and learned friend, in dealing with the subject of polygamy as he had done, had ventured upon dangerous ground, and opened up topics which had much better be avoided. But why does he not see that this is the very objection taken to the whole of this movement and to the Bill now before us—namely, that by assenting to this measure we should open a floodgate which no earthly power can shut, and introduce principles of which we cannot limit the application? My hon. and learned friend asked the hon. member for North Warwickshire (Mr. Spooner) what Scripture argument against polygamy can be advanced that is more conclusive than those that have been used in this case; and the hon. gentleman cannot answer that question. No more distinct testimony on any one question relating to the law of marriage can be cited from Divine revelation than that which applies to the subject under discussion. I am sure that my right hon. friend and colleague (Sir W. Heathcote) was entirely misunderstood when he was represented as having spoken of it as a doubtful question, whether or not these marriages are prohibited by the law of God. What the House will, I hope, recollect is this, that in discussing this question, relating to laws lying at the very foundation of society, manners, and morals, and which have received the universal assent of Christendom, we are not reduced to such slender means of ascertaining the truth as the mere exercise of our own private understandings, divested even of the assistance which they would have derived from a knowledge of the original language of Scripture. I confess that it causes me little less than astonishment to find hon. gentlemen say that they have opened the Bible and read the 18th chapter of

Leviticus, or, as my hon. and learned friend the Attorney-General has said, not that he has read the entire chapter, but carefully read and considered the 18th verse of the 18th section of Leviticus, and on the basis of that extended study not reaching beyond the translation placed in his hands, and therefore in which he is entirely at the mercy of the translators, and therefore at the mercy of authorities—he asserts that he has arrived at a state of comfortable conviction that the verse in question does not prohibit, but rather seems by implication to permit, marriage with a deceased wife's sister. I hope it is not necessary to mention to the House that it is not on the 18th verse of the 18th chapter of Leviticus that any argument can be founded. I warn those who use that verse, believing that it gives sanction to these marriages, that in quoting that passage they will find themselves bound and nailed to sanction polygamy. It is not possible for any man to draw a conclusion in favour of marriage with a wife's sister after her decease without being open to the reply that it precisely and to the same extent justifies polygamy, with the exception of the case of marrying the wife's sister. But the case of the 18th verse of the 18th chapter of Leviticus is clear. It does not rest on a mere inference or analogy.

It is a universal prohibition, contained in an early verse of the chapter, which forbids marriage with those who are near of kin, and the only question we are entitled to raise is, What is the meaning of the words 'near of kin'? Where are you to seek for their meaning? In the chapter itself; and I defy any man to give them a construction which does not make the case of marriage with a wife's sister come within the scope of the prohibition 'near of kin.' But my hon. friend who has just sat down (Mr. Lowe) protests against the use of this language to bind the consciences of men as part of a permanent revelation, and says that he considers the question before the House to be one with respect to which each individual is entitled to be guided solely by the dictates of his own conscience. Now let it be recollected that it is not open to hon. gentlemen to deal with these prohibitions as part of a narrow ceremonial law, intended for the exclusive constraint of the Jews; because

the chapter itself bears distinct evidence against that supposition, and shows that because the Canaanites had broken these precepts, God drove them out of the land. The Jews, too, were warned that if they broke them they would be visited with similar judgments. Am I, then, to be told that this was a law merely for the Jews ; or that, upon the moral ground, it is not binding on Christians? Can it be possible for a moment to deny that a moral law, which the heathens were punished for violating, was meant by the Almighty to be universally applicable, and by no means to be restrained in its operation within the narrow circle of the Jewish law? My hon. friend says, however, that conscience is a sufficient guide. Does he mean by 'conscience' the general and collective conscience of mankind, or the private conscience of each individual? If the latter be the sense in which the hon. gentleman uses the word, does he not see that his argument, if it be of any value, might be urged with equal force for the overthrow of our whole ecclesiastical legislation, as of the limited portion of that legislation with which the Bill proposes to deal? Why are we to legislate at all in matters ecclesiastical? Why should we have any rules on such subjects if every man carries in his own breast a monitor so perfect as to be a safe guide for him to follow, and safe also for his neighbours that he should follow? On the other hand, if he used the words in the former sense—if he means the collective conscience of mankind—I answer that that is a part of my case, and contend that the law as it stands is the embodiment of the collective conscience of mankind, and represents what may be fairly called, not only the general, but almost the universal voice and judgment of Christendom.

In the whole of the Eastern nations of Christendom which, in consequence of the absence of all great political changes, adhere more closely to primitive usages than the Western countries, the prohibition contained in the 18th chapter of Leviticus is in force with a generality and a vigour which admits of no violation or evasion of the command. And what, may I ask, was the case with the countries under the authority of the Holy See? Was the marriage of the husband with the deceased wife's

sister permitted in those countries? No! For 1,500 years after the Christian era you will not find a case in which these marriages were dispensed, and I believe in the infamous period of Alexander VI. the first case of a dispensation in this degree of affinity occurred. And what has happened within the last hundred years? I have seen with astonishment, in the papers circulated among us to-day, that in no other country in the world, excepting in three cantons and one half-canton in Switzerland, are these marriages prohibited. It is impossible for any statement to be further from the truth. It overlooks the fact that in the whole of that portion of Christendom, which represents more nearly by far than the West the primitive practice of the Church, having been less influenced by political motives for change, these prohibitions were in force without exception, and with such rigour that there is no escape from them; that in Western Christendom, in that portion which is in obedience to the Roman See, they are permitted as exceptions to the general law, so that even their very permission witnesses to the general prohibition. Why have the Roman Catholic members of this House been uniformly opposed to any measure of the character of that under discussion? Because motives of policy have never induced the Pope to afford any facility in Ireland for such marriages as are now sought to be legalised; and if a course less strict in that respect has been adopted by the Holy See in England, it has been in order to obviate the evils which would arise from mixed marriages, the natural consequence of the smallness of the Roman Catholic population in this country. Besides, though thus permitted, it is in conjunction with other exceptions, which we ourselves admit to be cases of consanguinity and incests. Therefore the law of the Roman Catholic Church is against these marriages; and if you tell me that the Pope has authority to dispense with them, I say, what is that authority good for, that you should assume it to be a principle of action?

Then, with respect to Divine law, I must show the House that there is something better for us to proceed upon than our own individual convictions as to the construction of any particular text in a chapter translated from the Hebrew,

however strong these convictions may be. Nothing can be more conclusive to my mind than that the interpretation of the Bible in this matter cannot be fairly questioned. When we are told it is a matter of doubt, it appears to me to be so only in the sense that everything is a matter of doubt to those who may have an interest in disputing it, or who may desire to do so. Any man has a right to say, 'It is a matter of doubt because I doubt; and as I doubt it, I am entitled to call it a doubtful matter'; even the great principles of Christianity embodied in the common law are principles which may be called in question by the licentiousness of individual minds. Here I speak, of course, of intellectual licence. I do not desire to cast any reproach which may not be just on those who differ from me on this subject, or on those who have contracted these marriages. Private opinion may question the authority of the universal voice of Christians on this subject, but it will question it exactly on the same grounds that it may question the whole results that Christianity has brought to mankind, and everything that Christianity has elevated out of the region of private opinion, and made part of the common property and intelligence of mankind, as well as everything that is embodied in our institutions and embodied in our laws. All this you may have called in question, and may be summoned to surrender in deference to the supposed rights of individual opinion. My hon. friend evidently regards it as a matter of religious liberty that these marriages, which he admits it may be improper or at least inexpedient to contract, should be legalised, and he says you are not entitled to erect your own convictions into a law for other people. Now, I ask, is this really a question of religious liberty? And if it be so alleged, is it not time we should come to some understanding as to what religious liberty means? I venture to give an instance of what I conceive to be religious liberty. I will take, for example, the case of a highly estimable and esteemed body of men, who do not deem it necessary to conform to the Sacrament of Baptism. Nothing can be more distinct than our conviction as to this; but we do not compel those who differ from us to be baptised; but we say to them that, before they are admitted as members

of the Church of England, they must be baptised, or they cannot partake of its benefits and privileges. In the present instance, it is not merely that there is a distinct body of men asking that the law may be made applicable to their case, but this is a proposition, so far as the Bill is concerned, for the establishment of an anarchy in the Church of England and the country at large. When it is said that there shall be in the Church of England a law with respect to these marriages, then I am told that this is a question of religious liberty. By applying this fully, what would be its results? Why, that every principle and ordinance of the Church of England may be modified and absolutely done away with under the pretence of religious liberty. To illustrate what I mean, I may cite a passage from a letter of Lady Wortley Montague, in which, speaking of the lax state of religion in her time, both among the clergy and the laity, she says : 'It is generally considered that they have taken the word "not" out of the Commandments, and inserted it in the Creed.' I will suppose that my hon. friend had a proposition not to take the word 'not' out of the Commandments, but that it should be inserted in some part of the Creed, or that the Creed should or should not be read as might be thought fit: am I to be told that this is a question of religious liberty? and should I, on this principle, be authorised to say to the clergy, that whether they did or did not read the Creed, they should go equally unquestioned? Why do we require that the creed should be read? Because we believe it to express the truths of Christianity, and we maintain this law because we believe it to be a part of the Divine immutable law. If the hon. member assumes that he has a right to introduce into the Church of England an anarchy, or a principle of indifference for that which is strictly commanded as the basis of Divine law, I say the principle on which he proceeds is good for abolishing every restrictive law applicable to the Creed or discipline of the Church of England. The demand here made is not for persons wishing to be relieved, but for the alteration of Church and State, and in deference to a small minority we are asked to change a position which has been clearly maintained by the voice of Christendom through all time.

The Attorney-General, in the early part of the debate on this Bill, delivered one of the most effective speeches that have been delivered on it. He spoke of the social character of English women, and feeling that he laboured under the disadvantage of having to contend against the admitted fact that the women of England were opposed to the contemplated alteration in the law, he did his utmost to do away with the impression which that fact was calculated to make. My hon. and learned friend expressed, in language the most glowing, his belief that, although the women of England might be opposed to the measure, looking upon it as wives, yet that, when they regarded it as mothers, desirous that their orphan children should, in the event of their deaths, be committed to the charge of tender and careful hands, they could not fail to alter the opinions which, with reference to the Bill, they now entertained. I will confess that I was led by the pathos and fervour of my hon. and learned friend's eloquence to concur for a moment in that view of the question. When, however, I recovered from the delusion in which he leaves us when we listen to him, and came to ask myself in cold blood what was the meaning and value of a lecture from the Attorney-General to English wives and mothers—they who have hitherto so well discharged the duties that devolved upon them—on the view which they ought to take of their position, I must confess, that which originally appeared beautiful and touching entirely changed its character, and even wore the semblance of the ludicrous. For the House of Commons, though led by the Attorney-General, to instruct the women of England on their duties as mothers and wives, which they have not sufficiently considered, or to teach them their maternal obligations, which they have so incompetently filled, appears to me to be about as conformable to prudence and good sense as if the women of England were to send messages to us when we were engaged in discussing bills of exchange, or a tax on bankers' cheques, to tell us that we had not sufficiently estimated the circumstances of the case on which we were about to legislate, and to point out to us the mode in which our duties ought to be performed. For my own part I must say that to the feelings of the wives and mothers of England upon

the subject under our consideration, I thought it expedient that no small importance should be attached. So much, however, has been said on this part of the question that I will not trouble the House with any further discussion on it.

There is, however, one demand which I feel authorised to make on the hon. member for North Lancashire, the hon. member for Kidderminster, and on all who are prepared to vote with them. They come and ask us for this Bill ; they speak of the expediency of altering this law, of the advantages that will attend the contraction of these marriages, and they contest the construction of the Divine laws on principles which would make everything doubtful ; but there is one thing which not a man among them has attempted to do, and that is to state a clear, definite, and intelligent principle on which they proceed—a principle which they can state in language which we can understand, and from which we may be able to know, not why they ask for this Bill—for we know they do so because some persons are galled by the present state of the law—but what we desire to know is, when that law which is now asked for is granted, how are we to stand with regard to that which remains? I know that when there are demands on justice which are not inextricably mixed up with others, I have no right to say how far, when this begins, will it go ; but, supposing that it were proposed to be provided that no earl should sit in the House of Peers, we should be justified in asking what you intend to do with viscounts, dukes, and marquesses ; and, supposing that in 1829 you had sought to emancipate the Roman Catholics of Leinster and Ulster, we should have been justified in asking what you intended to do with the Roman Catholics of Munster and Connaught. And I think that I am now justified in asking, why does the hon. member propose this Bill and no other, and what is to be the Bill of next year? At present we have a law which goes up to a certain point and stops, the prohibitions of which are intelligible : affinity is considered the same as consanguinity for the purpose of these prohibitions, which are carried up to the third degree ; we have an answer to those who complain of these prohibitions by showing that the rule proceeds on general grounds and is uniform in its application. But

what does the hon. member now propose? He makes an arbitrary selection of two out of thirty cases and leaves them, having satisfied, for the moment, the appetite for change, until he finds it convenient to return to the charge. Is there anything in these two cases which will leave the remaining twenty-eight safe? We are entitled to know something on this subject, for this is not merely a question of raising the income-tax to 6, 7, or 8 per cent., or even probably some higher point than that, but this Bill affects our social arrangements—and there is nothing that has cost mankind a greater struggle—and the best social result of Christianity is the perfect equality of man and woman as to the facility of contracting marriage. This Bill meddles for the first time with that equality. The hon. member proposes to authorise the marriage of a man with his deceased wife's sister, and therefore with his wife's niece; he legislates for the man, but he does not propose, on the other hand, that the aunt may marry her husband's nephew. Is this a small change? When was woman first elevated to an equality with her stronger companion? Never, till the Gospel came into the world. It was the slow but certain, and, I thank God, hitherto unshaken result of Christianity, not considered as a system of dogmas, but as one of social influence, to establish a perfect equality between man and woman as far as the marriage tie is concerned. The hon. member now proposes to change this fundamental law and principle, and I have a right to ask him how far he intends to proceed, and whether he intends to have one marriage code for men and another for women? He proposes to legalise marriage with a wife's sister, which is in the second degree, and not with the niece, which is in the third degree; he is going to legalise marriages in the second degree, but still leaves in full operation the prohibitions in the third degree; but on what principle, I ask, are you to prohibit those who stand in the third degree of affinity from marrying after having legalised a marriage in the second degree?

The hon. member for Kidderminster had an answer for this which I think involves him in still greater difficulties, for he did not scruple to say that he draws a distinction between affinity and consanguinity, and that, if it were

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needed, he was ready to throw over affinity altogether. Sometimes hon. gentlemen tell us that they consider affinity one thing and consanguinity another, but this points to a vague succession of indeterminate changes dependent on nothing but agitation, and I will not say passion, but licence of opinion, which threatens to subvert the system of restraints in marriages, which I have stated to be the result of the proclamation of the Gospel among men. This Bill does not stand on popularity, and nothing could be more wretched if, while we were pulling down this fabric, which it has taken so many ages to construct, and mutilating its proportions, we should be told that, because statistics have been looked into from which it appears that there were not so many marriages of this kind as there were of another, therefore we will legalise the marriages of which there have been 100, but prohibit those of which there have been only 80 ; and I do not think that such a course would be satisfactory to the country. But the hon. member does not proceed even on this principle, for while he legalises marriage with a wife's sister—of which, I grant, there appears from statistics to have been more than of the other kinds—he also legalises marriage with a wife's niece. I have seen the result of an inquiry which I believe to be trustworthy, and which has been made in a most approved manner over a number of parishes, embracing all classes in various circumstances, and including 1,000,000 persons. From this inquiry it appears that there were 326 marriages of an irregular kind ; of these there were marriages with a deceased wife's sister, 144. But next came the bigamists and polygamists ; of these there were 75. Next came marriages with a brother's wife, of which there were 46 ; and most singularly there came, next to these, marriages with a niece in blood, 24 ; but with a wife's niece there were only 17 marriages. I want to know, then, on what principle the hon. gentleman has selected the case of a wife's niece ? He has not done so with reference to the principle of affinity ; he has not done so on the ground of public opinion, for there were only seventeen of these cases in this inquiry, while the instances were more numerous of those kinds of marriages which the hon. member does not propose to

legalise. I am persuaded that my hon. friend, from all I have perceived of him in this House, is too honourable and ingenious a man to come with a covert scheme, which he is not prepared to avow. I have stated that we have a definite system on the subject, which requires it if any subject does—and I ask him, what is his view with reference to this, and where are we to stop?—and I am certain he will not shrink from answering me, but will declare the principle on which he intends to proceed, and the basis on which he thinks the law ought to rest. The hon. member for Kidderminster speaks of the collective conscience of mankind—I interpret him in the best sense, though I think that he meant the conscience of each individual—and he maintains that this would be a proper and sufficient guide from age to age for the course of legislation on this question. God forbid that I should say a word lightly of conscience, which remains an index of the will of God even among those who have not felt as we have the fuller and blessed light of revelation. But are we who have realised the results of Christianity to go back from Christianity to conscience? This, which is sometimes called the light of conscience, sometimes the law of nature, and which there are no two ages or countries in which it has ever been alike, has been of gradual growth and training from the infancy of mankind until it has reached the highest level on which Christianity has been placed; and if we are asked to go back from that level, I ask, where are we to stop? And I say that while I have a superior, I should not be content to adopt an inferior, standard. The law of the land, not in an arbitrary manner, but on principles based on Divine revelation, has adopted our present prohibitions in marriage, and I oppose the present measure because I see that it is part of a system which, I do not say is intended to be so, but which in its working is certain to be most pernicious to those results which the Christian religion has wrought out for mankind; and I must say, whatever reluctance I may feel in denying any claims brought forward on the ground of religious liberty, that I will most emphatically say ‘No’ to the measure now before the House.

*To be had at the Offices of the Union; also of E. W. ALLEN,
4 Ave Maria Lane, E. C.*

Marriage Law Defence Union Tracts

No. XXXV.

What the Peers said

*In the House of Lords, in Opposition to the Third
Reading of Lord Dalhousie's Marriage Law
Reform Bill, June 28, 1883*

LONDON

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1883

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In Opposition to the Third Reading of the Marriage Law Reform Bill, June 28, 1883.

THE DUKE OF MARLBOROUGH, in rising to move, as an amendment, that the Bill be read a third time that day six months, said he would not have been justified in taking up the time of their lordships, in asking their attention to the subject once more, with a view to the reconsideration of the decision arrived at on a recent occasion, were it not for the narrowness of the division on the second reading, and the nearly equally divided opinion in their lordships' House. When the question came before them on the second reading, the arguments that were used by his noble friend behind him (Earl Beauchamp), in opposition to the measure, were of such a forcible, exhaustive character, that he felt he would be unduly trespassing upon their lordships' attention if he were to endeavour to recapitulate any of the arguments that had been used in opposition to the measure, or go at any great length into the subject. But it was only fair to consider what had taken place since the second reading of the Bill. The Bill had been in Committee of the whole House, and had there been subjected to a furnishing process at the hands of the noble earl opposite (the Earl of Dalhousie), and altered in a variety of ways, especially in regard to its retrospective application. While to some extent, it had assumed a new appearance, he could not say that it was improved in its character. In fact, he

considered the Bill to be in its present form a monstrosity, and he was reminded by it of the words—

Ut turpiter atrum

Desinat in piscem mulier formosa supernè.

Perhaps, before he went into the one or two objections that he might take with reference to the Bill as it stood, he might be allowed to say a few words, as he had not yet addressed their lordships upon the subject—he wished to say a few words on what appeared to him to be the religious aspect of the question. He must admit, to a great extent, the force of the remarks which had fallen from noble lords opposite, to the effect that it was difficult to discover, in exact terms, any definite and express prohibition in the Scriptures against these marriages which the Bill was intended to legalise; and, although the subject had been treated in a very light and airy, and, indeed, jocose manner by the noble and learned lord opposite (Lord Bramwell), who always attracted the House by the pungency of his remarks, yet, at the same time, he thought it was almost a pity that they, who were opposed to the Bill, should endeavour to rest the objections to it upon grounds that, to his mind, could not be clearly proved, and to which exception might be taken. It had always appeared to him that, if a marriage of this kind were expressly prohibited by Holy Scripture, the prohibition would have been in such direct and unmistakable terms that ‘he who runs may read.’ He must admit he could not convince himself that any prohibition could be found in any such unmistakable terms. But it appeared to him, however, that there was an argument of a far higher and more weighty character that could be used, and that was this—that they knew the words which fell from the Saviour in regard to bigamy and the putting away of wives. If the law of Moses allowed practices of that character, in the same way it did not prohibit marriages of this kind. But they had arrived at a different state of things, and, with the sanction of

Christianity and of the New Testament, they might say that old things had passed away, and that they had a higher law, and that a higher morality had been introduced. That was the ground on which they ought to test the religious sanction of these marriages; and that, he thought, was a far higher ground of objection than obscure passages of the Old Testament, or the mere presence or absence of an express prohibition. They had this exemplified in the law of the country.

The noble and learned lord opposite (Lord Bramwell) would find it difficult to find any passage of Scripture that prohibited the plurality of wives, yet he would not deny that bigamy was a crime. He (the Duke of Marlborough) contended that, whatever might have been the Mosaic law which was framed for society in an untutored state, by asking them to alter the law on the subject, they were going back in the scale of society, and asking them to adopt a lower law than that to which Christianity had raised them. When they were in Committee on this Bill he was rather surprised at the view taken by the right rev. bench in connection with the retrospective action of the Bill. One right rev. prelate had spoken out in a high-minded and pungent, cogent argument; and he regretted that that right rev. prelate had been taken to task for what had been called the hard-heartedness of his arguments. It was supposed that, by not making this Bill retrospective, a class of innocent children would be injured. But how did they find that this beautiful provision with regard to innocent children had been carried out throughout the Bill? Why, he found in the 2nd clause that where a man had been sufficiently guilty to repudiate the marriage that he had contracted with his deceased wife's sister, and had married another person, in that case it would not be legal; because that would involve bigamy; and the children of such a marriage, equally innocent and unoffending, and unconscious

of the acts of their parents, were kept in illegitimacy. What did they find, again, in the 3rd clause, in regard to a more substantial matter? Why, that all children born of these marriages were expressly excluded from any participation in any property or devise that might otherwise have come to them. Therefore they came to this state of things—that if a man had married his deceased wife's sister, and had three children before the passing of this Act, and had a fourth child afterwards, and if the man happened to die intestate, those children who had been born before the passing of the Bill, although they might be regarded as legitimate, would not take the property to which, if ordinary legitimate children, they would be entitled. If these were fair provisions, then he had nothing more to say on the subject. Another difficulty was that the children of two sisters were naturally cousins; but if they happened to be the children of one father they became brothers and sisters. The Bill, it would be seen, was full of inconsistencies and full of injustice; and the relationships which would be created, if it passed, would be abnormal. He believed the noble earl opposite had stated that the universal view in America was in favour of these marriages. Well, he alluded to that point only because it was due to a gentleman who had addressed him by letter on the subject since the second reading of the Bill. Dr. Coleman, an American clergyman, of the Diocese of Ohio, who was at present in England, said:

As to the United States, will you allow me to say that there has been, for many years, among a considerable body of Churchmen, a decided and growing repugnance to such marriages; a repugnance openly expressed, and not more general only because the question has been but little discussed? Where it has been discussed, the antipathy to them has been enlarged and deepened.

And he went on to say that a very strong resolution was proposed to be adopted by both houses of the General Con-

vention in October next, affirming the declaration made by the House of Bishops in 1808, namely:—

Resolved, that ‘the old Table of Affinity and Kindred, wherein whosoever are related are forbidden in Scripture to marry together, is now obligatory on this Church, and must remain so, unless there should hereafter appear cause to alter it, without departing from the Word of God or endangering the peace and good order of this Church.’

That resolution had been prepared by a Committee of the Church, and was about to be presented to the General Convention of the Episcopal Church of America; and a large portion of the American people looked with great interest to the vote their lordships might give on that occasion, as bearing upon the decision which might be come to on the resolution. But he thought their lordships must look upon this subject from a wider and more general point of view. They had discussed the subject as if it were merely a social question, affecting the law of marriage, affecting society as it existed in this country, and their own feelings in their families.

But he thought there was a wider view they must take of it; and he did not know that he would have troubled their lordships with a few remarks on this occasion, were it not that he was anxious to present to them something of this wider and more general view. In a country like this, where we were most happily at peace with ourselves, changes were not brought about with any very great difficulty. The forces of revolution, although they might be strong and dangerous, did not come suddenly upon us as they did in countries where political passion swayed more powerfully the minds of the people; but they came with secret and insidious steps. He begged their lordships to reflect upon this measure in a more serious view—as one of those approaches to secret, but not less sure, revolution that was coming upon this country. The other day an occurrence took place to which he wished to

allude. It was an occurrence of great interest in Birmingham, where the respected and oldest member for that town was received by his constituents with every demonstration of honour and respect. In order to celebrate that event a dinner was afterwards held, at which a speech was delivered by a Minister of the Crown, who, speaking with a full sense of his Ministerial responsibility, uttered these words. He said he wished to draw a comparison and a contrast. He said he wished to compare the reception given to Mr. Bright at Birmingham with an occurrence—he would not say similar, but parallel—that had taken place in a neighbouring country—namely, the coronation of the Emperor of Russia ; and the words that that Minister of the Crown used were these—

Pomp and circumstance were wanting ; no public money was expended ; no military display accompanied Mr. Bright ; the brilliant uniforms, the crowds of high officials, the representatives of Royalty, were absent ; and no one was sorry, for nobody missed them.

That was the opinion expressed by that Minister of the Crown with regard to the Crown of a neighbouring country ; and, on the same occasion, this Minister stated that the Cabinet of which he was a member—and this was an extraordinary secret for him to divulge—was more Radical than the House of Commons ; and he proceeded to illustrate that statement by its perpetuating the existence of three great anomalies, which were these—the first was the exclusion of Mr. Bradlaugh ; the second was the state of the representation of the people in Parliament ; and the third was the Establishment of the Church. Now, this Minister, speaking, as he (the Duke of Marlborough) supposed, with a sense of responsibility, and thinking that the Cabinet, with whose opinions he was so well acquainted, was more Radical than Parliament, spoke for his colleagues as well as for himself, and the words he used in connection with the third anomaly were these :

The connection between Church and State exists in all its force and vigour ; but I will undertake to say that if to-morrow you could poll the constituencies, the vast majority of the Liberal electors in the boroughs of the United Kingdom and the great majority of Liberals in the counties would be in favour of Disestablishment ; and yet, I suppose, that if a resolution to that effect were moved to-morrow, only a small minority would be found to vote for it.

[‘Very small!’ and laughter.] Now, let him explain how the opinions he had quoted bore upon the subject before the House, which their lordships were now asked to pass. [‘Hear, hear!’] He was quite ready to enter into the argument upon the subject. Everything that related to anything in the nature of a prognostication of a portentous kind was always received with sneers. He would ask them to consider who were the supporters of this Bill. They might be divided into two classes. First, there were those who supported it from pure and conscientious motives, such as he had no doubt induced the noble earl opposite and most of their lordships who voted with him, and who believed there was a grievance, and that it ought to be removed. But there was another class of persons who supported this Bill, and they were the avowed enemies of the Established Church. The great body of Dissenters throughout the country supported the Bill, and Her Majesty’s Government also supported the Bill. He had no doubt they did so because the Dissenters were their friends, and they would not offend them. Now, let their lordships see what the effect of this Bill would be if passed. In the first place it would bring in a conflict between the law of the Church and the law of the land. They knew what would be the consequence of that. There was another point. It was said : ‘If you pass this Bill, see what safeguards you have attached to it.’ He had seen a great deal of safeguards in his day. He had seen, from their own side of the House, a Reform Bill brought forward which was full of safeguards, and these safeguards had disappeared very rapidly one by

one. This Bill had also safeguards, and one of these was that these marriages were not to be performed in churches. How did any rational man think that it would be possible to maintain that provision? There was a very strong feeling in the country about being married in church. A great many people thought being married in church sanctified the operation, and that a marriage in church was more a marriage than a marriage anywhere else. And that was a very proper and legitimate feeling. But now their lordships put a stigma on the marriages dealt with by the Bill. They said they were lawful, that there was nothing in them contrary to the laws of God or man, yet they were not to be performed in church. The very first agitation that took place after the passing of the Act would be for the performance of these marriages in church. In that case, what would happen but this—that the clergy would not solemnise these marriages, and the duty would be left to Dissenting ministers? The beautiful Marriage Service of the Church would not be used for this purpose, but would be superseded by some other form, till ultimately they would have brought about a state of things which would imperil the relation between Church and State, and bring about the common use of churches, the great object for which every Dissenter in the kingdom had long been striving, and which every Radical in the kingdom desired should become an accomplished fact. He had no doubt a great many noble lords on that (the Conservative) side of the House supported the Bill for very different reasons—because they did not look beyond the present moment, and thought merely that an injustice had to be redressed and a long-standing dispute to be settled, and that if they passed this measure they would get rid of the difficulties and disputes that were connected with the question. But he appealed to noble lords on that side of the House, and asked them, in view of the circumstances which he had explained, to pause before they gave a

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vote to assist in passing the Bill. They had seen the opinions that had been expressed by a Minister of the Crown. They had seen the way in which these opinions had been treated by his colleagues. They had seen the state of feeling out-of-doors. They knew that the passing of a measure of this sort could not stop there, but that it would involve the obliteration of all the decrees of the Church with regard to affinity ; that it would put a nail into the coffin of the Church ; that it would seriously weaken, if not annihilate, the connection between Church and State. He appealed to noble lords to take a wider and a more general view of this question ; and, even if they did but delay it for another year, let them give the country another year's breathing-time to consider this measure. Let them see whether new thoughts and lights might not arise, and a new and better sentiment. He would implore noble lords not to precipitate the passing of this measure by their votes or by their voices on the present occasion, as by so doing they would run the risk of destroying the Church they revered and endangering the Throne they loved. He moved that the Bill be read a third time that day six months.

THE DUKE OF ARGYLL said : I am not able to concur in all that has been said by my noble friend opposite, and to much of the argument he has used I do not attach any importance. But I rise to protest against the doctrine laid down by my noble friend (Lord Houghton), who has just affirmed that the motion of the noble duke was unprecedented and unconstitutional. It is strictly in accordance with precedent that the opponents of a measure who have been defeated on its second reading should try to rally their

forces and record their votes against that measure on the third reading. Why has Parliament provided that every measure should go through certain stages, if it be not to give, to all members of both Houses of Parliament, an opportunity of debating the question on every possible occasion, and that the minority should have an opportunity of converting itself into a majority? On these grounds, I think that nothing can be said against the course which my noble friend the noble duke has taken, so far as its legality or precedents are concerned. I pass from that to the consideration of the position in which we stand. I think even those who opposed the Bill most bitterly will be disposed to agree that, in the hands of my noble friend (Lord Dalhousie) it has been conducted, not only with marked ability, but with that good taste and that good feeling which above all things ought to guide our debates upon such a subject as this ; and I must also do my noble friend the justice to say that, in preparing the Bill for report, he has faithfully carried out the promises into which he had virtually entered with various members of the House when the Bill was in Committee. He has done his very best to remove the objections which were taken to the Bill by the Lord Chancellor and by other members of the House. But he has not succeeded, because no man could succeed in removing all objections to the details of this Bill. The noble duke (Marlborough) has pointed out some of the anomalies which would be produced by the retrospective action of the Bill. Some children would be legitimised, and yet they would not be entitled to inherit the property of their parents. The Bill is full of complications and difficulties that are inseparable from it. But I am not going to pursue this argument of detail. I find myself now called upon to say, 'Am I content, or am I not content, that this Bill should pass into law?' And, feeling as I do, and thinking as I do, upon this question, I am bound to

say that I cannot, and I will not, say 'Content.' Under these circumstances there are but two courses for a public man to take. He can absent himself from the division, and leave other members to vote as they please. I do not say there are not occasions on which a man might take that course, but for my own part I do not feel that this is an occasion on which I can do so. I feel it due to myself to come down and explain to the House why I shall say 'Not content' to the third reading of this Bill. I confess that, great as are the objections that I feel to this measure—believing, as I do, that it is opposed to sound principle—I think the objections are still greater to some of the arguments which have been used in favour of it. I confess I experience something of the unpleasant feelings of nausea, lassitude, and fatigue, which come over the mind when a question, so disagreeable as this, so odious in many of its aspects, is raised year after year in both Houses of Parliament; and I am convinced that the change which has come over this House has been not so much a change of conviction as a result of mere weariness, and a desire to get rid of this question. I have myself felt the temptation to say, anything is better than to hear the discussion of this question—let it go. But when I come to think of the arguments that have been used by some in this House, I cannot help entering my protest, not only by vote, but by speech, against them. I have heard it said, in the first place, that the scriptural or religious argument has been abandoned, and I think my noble friend who has charge of the Bill has dwelt upon a speech which was made by a right rev. prelate last year, who always speaks with great ability and eloquence—my right rev. friend who presides over the diocese of Peterborough. What did that speech mean—that the scriptural argument has been abandoned? No; it meant simply this, that the authority of a particular

text has been given up on this subject. That, I understand, is the only admission made by the right rev. prelate. But suppose we go further, and say that there is no particular text of any sort or kind, in either the Old or the New Testament, which forbids these marriages—does this, I ask, abandon the scriptural or religious argument? Certainly not. My noble and learned friend behind me (Lord Bramwell), who made a remarkable speech on the second reading of this Bill—a speech marked by all that vigour of intellect which is a great addition to the debates of this House, and which, I trust, during many future years will be of still greater value to it—my noble friend asked whether there is any prohibition of these marriages in Scripture. When God desired to prohibit anything He knew how to express it. He also said there are many things prohibited in Scripture, such as ‘Do not steal’; and if it was intended to prohibit these marriages, we should have had some express prohibition. At the same time, others have said that if there were such a prohibition in the Judaic law we should not be bound by it. I cannot help thinking, when I hear these references to detailed principles, that it is not the opponents of the Bill but its promoters who may be accused of Judaism. The latter appeal to the absence of direct prohibition. They desire to be guided always by some petty and verbal direction. That was the spirit of the Jewish Dispensation; it is not the spirit of the Christian Dispensation. ‘Thou shalt,’ and ‘Thou shalt not’—that was the language of the Jewish Dispensation. On the contrary, Christianity adopted a wholly different system. It lays down general principles, which are recognised by those who conscientiously read the sacred volume, and it leaves it to the conscience of the Christian world and to the wisdom of the Christian Church to give these general principles their legitimate application. I say that our whole civilisation, at least all

that part of our civilisation which is not concerned with mere property and civil law—all that part of our civilisation which refers to moral obligations and the rules of Christian conduct—the whole of it depends on the general principles laid down by Christianity, and which have been enforced by the traditions and authority of the Christian Church. My noble friend has reminded the House that there is in Christianity no prohibition of polygamy, and if we are determined to break down every barrier excepting 'Thou shalt,' and 'Thou shalt not,' we shall soon come to have polygamy introduced into this Christian country. All the great Christian Churches, first the Greek Church, the Latin Church, and all the reformed communions, have united in condemning this particular kind of marriage. It may be true that we have not a definite command in regard to it, but I ask you this—Can any man say that there is not a principle laid down in regard to this question, both in the Old and the New Testament? Is it not certain—can it be denied—that some of the prohibitions in these specific prohibitions in the Old and New Testament, and some of those denunciations which are contained in the New, rest entirely upon the analogy between affinity and consanguinity? That is so. Many of the prohibitions laid down in the chapter of Leviticus are based upon the ground that affinity is to be considered as consanguinity, and there are two allusions at least to it in the New Testament. In one passage, which has been referred to in the course of this debate, we find the Apostle Paul denouncing as a crime a union which is unnatural and incestuous solely on the ground of its being a matter of affinity. I next come to the objection of my noble and learned friend behind me the other night, with regard to the form of words in which this doctrine has been laid down in the Christian Church as to man and wife being one. I am sorry that the noble and learned lord has

treated the expression 'one flesh' with some ridicule and contempt. I do not believe that my noble and learned friend intended to do so.

Lord BRAMWELL : It is a metaphor.

Of course it is, and what are metaphors? They are often the best expressions of the very highest form of truth. But if the noble and learned lord objects to that expression, I suppose we shall find him in a few years coming down and objecting to another metaphor—the marriage tie. Perhaps he will come down and tell us there is no tie—that man and wife are perfectly free, that there is no real tie, and that it is only a metaphor, so that we can loose our relations as soon as we please. Thus from this argument against metaphor we might slide into those doctrines about the facility of divorce which are so opposed to the doctrine and practice of the Christian Church. Although it is a metaphor, it is a metaphor expressive of a truth, and a truth upon which modern society is based, and that is, the sacredness of the union between a man and his wife. I say that, as a question of Christian jurisprudence, a man should not marry a relation of his wife nearer than a relation of his own. That is a fair and legitimate application of the general principle for the regulation of Christian society. That is the view I take. It is not driving the metaphor to an absurdity at all; but it lays down a convenient rule and principle for the regulation of human society. Not holding the doctrines of my noble and learned friend as to the absurdity of theology, or the necessity of not studying it, I must say I am wholly opposed to changing the law against the united doctrine of all branches of the Christian Church from the very earliest times. I have never yet met one member of this House, or one member of the other House of Parliament, or anybody out of doors, who was in favour of this measure, and who, when I asked him, did not frankly confess that he was willing to destroy

all the degrees of affinity, and get rid of them, and to rest the law upon the doctrine of consanguinity. I ask, is it not quite certain that, when we have pared down these particular prohibitions, we shall soon be asked to go a step farther? Marriages will be demanded which, as they now stand, are disgusting to all of us. You may say that they are not likely some of them often to happen. I am not at all sure of that. Your lordships may know cases in which a man has married a woman with grown-up daughters, with regard to whom there is no enormous disparity of age. Will it not be thought entirely monstrous that such a man should marry his own step-daughter? I believe my noble and learned friend would himself recoil against such a union. But it is said—‘These things are so unnatural that you may trust to the reason and instinct of mankind.’ No, we cannot trust to the reason and instinct of mankind. We can trust to the instincts of the lower animals, for they hardly ever go astray. But we cannot trust to the instincts of mankind, for the very reason that he has reason, and his nature has become corrupted. But perhaps when I mention the corruption of human nature, my noble and learned friend will say, ‘Oh, that is theology. I care no more about theology than I do for astrology.’ But the corruption of human nature—is that a doctrine of theology? Yes; but it is more. It is also a fact in natural history. We have heard a great deal lately of Jupiter and Saturn, and of certain principles which have been dismissed to those planets. But supposing a naturalist coming from Jupiter or Saturn, and describing the inhabitants of this earth. Of man alone, and not of the lower animals, could he say that he has instincts and energies which are constantly leading him to a course of action injurious and prejudicial to himself and to the family and race to which he belongs. Theologians gave a reason for that corruption. That would be a question of theology, but the fact of it is a

question of natural history, and I say that in the light of that fact we cannot trust, on this subject of the relation of the sexes, to the reason and instincts of mankind. The thought of those unions is horrible to us now, because our feelings of horror, our sentiments and opinions as to the moral obligations of mankind, have been built upon the doctrines and teachings of the Christian Church. But when these are abandoned, year after year we shall sink to a lower depth upon this great subject. Depend upon it this is but the first of a series of attacks upon the whole laws of marriage and divorce. Feeling strongly on this matter—thinking nothing of any of the arguments which I have heard in favour of the measure, seeing their utter fallacy in point of argument, and their inapplicability to the condition of man, as I know it to be, I shall most heartily, over and over again, say, ‘Not content,’ to the third reading of this Bill.

THE BISHOP OF WINCHESTER : The noble and learned lord (Lord Bramwell) has parried the question whether there is any religious prohibition of those marriages. I am not going to inflict a theological argument on the House ; and I shall endeavour to confine myself to history and common sense. For several years, and specially this and the last year, it has been triumphantly stated that the religious argument has been abandoned. This statement, indeed, the noble duke has eloquently brushed away. But I wish emphatically to state that the Bishops and clergy of the Church of England rest the case almost entirely on religious grounds. If the case did not rest on religious grounds, I for one should not so earnestly have opposed the Bill. In the first place, every orthodox Church and every tolerably orthodox sect in

Christendom holds the doctrine that the moral law of the Old Testament is binding upon Christians, and that the New Testament is the development of the Old. There is a famous saying accepted in the Primitive Church, '*Novum Testamentum latet in Vetere Testamento, Vetus Testamentum patet in Novo.*' Then comes the question whether there is any moral law in the Old Testament concerning incest and marriages of affinity. It would be very strange if no prohibition of incest were to be found. If it is to be found anywhere it is certainly in Leviticus xviii. It has been held universally in the Church from the first to the seventeenth century, that the Levitical code contained in that chapter is a code of moral law and moral obligation, and that it is binding upon Christians. The noble and learned lord says that there is not in the Levitical code any clear prohibition of marriage with a deceased wife's sister, such as would surely be found if it were contrary to God's will. In that case he maintains that it would be as clear as when it is said, 'Thou shalt do no murder.' Would he apply such an argument to the laws of England? If nothing were law in England but such as is expressed in terms so clear as this, there would probably be no need of that noble profession of which the noble and learned lord has been so distinguished a member; probably there would not even be need of the judges of the land. The noble duke, who has just spoken so eloquently, has truly pointed out that in morals we must have recourse to general principles. And in Leviticus xviii. general principles as to marriages of consanguinity and affinity are clearly laid down, and these examples are given for the application of those principles. 'Thou shalt not approach to any that is near of kin to thee' is the great principle. Then three degrees of consanguinity are named as forbidden—viz. parent with child, brother with sister, uncle or aunt with niece or nephew. Next, exactly the same three degrees of

affinity are specified and illustrated. Every example is not given, because it is not necessary. If it be said that 'wife's sister' is not expressly named, but only inferred from 'brother's wife,' it must be remembered that there is no distinct prohibition of a man's marrying his own daughter, it is inferred from and implied in a man's not marrying his mother. This chapter xviii. (from v. 6 to v. 17) hedges round the whole circle of the home and the family within these three degrees of consanguinity and affinity, and makes all within it sacred and pure. There are only two arguments of any weight against all this. One is that 'we are not Jews.' In one sense, no doubt, we are not, as the noble duke has pointed out ; but in another we are. A very distinguished statesman, who not long since led this House, said of himself, that he was a 'developed Jew.' So, truly, we are all developed Jews. All the privileges and all the moral obligations of the Jewish fathers still are ours, only expanded and intensified. The other argument is based on the famous 18th verse of the same chapter, a verse which it is the fashion to quote as if it simply repealed, as regards this particular degree of affinity, the whole of the principle first laid down in the preceding verses. Now, that 18th verse is an extremely difficult and most ambiguous verse. It seems difficult to fit it in to the rest of the chapter, and it is capable of at least four different interpretations. I protest against the argument that a clear and complete code of law could be repealed and annulled by one difficult, doubtful, and ambiguous sentence.

Then the Bill is extremely illogical, and is sure to lead to further consequences. It is illogical to permit marriage with a sister-in-law, and to retain the prohibition of marriage with one further removed—a niece-in-law or an aunt-in-law. As to the view which Christians have taken of this law, it is not too much to say that all Christendom for the first fifteen centuries was unanimous in its belief that these mar-

riages were forbidden by the law of God. We have proof of this in very early days. Some of the very earliest canons and councils forbade them. We possess the testimony of a very eminent man, St. Basil, theologian though he was, in the fourth century, that it had been held from the first that such marriages were to be forbidden and detested. As soon as the Roman Empire became Christian under Constantine, the laws of the empire were conformed to those of the Church, and these marriages were strictly prohibited. The Latin Church forbade them from the first. The Greek Church forbade them, and still forbids them, permitting no dispensation. The history of dispensations is, that in mediæval times the Church had added new restrictions, such as the prohibition of the marriage of cousins, and even of godfather with godchild; so that the burden of such prohibition became intolerable. Dispensations against these new restraints became inevitable; and at length in the fifteenth century, Alexander VI., the greatest monster that ever sat on the Papal throne, and, perhaps, on any throne, first gave a dispensation to a prince to marry his sister-in-law. But it will be said that all this is ancient and superstitious; and that the relaxing of these restrictions came in with Protestantism and the Reformation. No, my lords, it was not Protestant. Luther, the special Protestant, who was very lax in his notions of marriage, and even permitted bigamy, he and Melancthon, and other Lutherans, opposed and rejected these marriages. So did Calvin and Beza, and all the Calvinist Reformers. So, I need not say, did our Anglican Reformers, to whom we owe the Table of Affinities affixed to our Prayer Book, and hung up in our churches. No, it was not at the time of the Reformation, it was in the seventeenth century, in the most corrupt age of German morality, that these marriages were first permitted in Germany, and then in other continental Protestant countries. They have been permitted in

Germany, in Holland, in America, and elsewhere. In these countries marriages in almost all degrees of affinity are permitted, and even in some degrees of consanguinity, as between uncle and niece. These marriages, it has been said, give great satisfaction in those lands. The noble duke who moved the rejection of this Bill has shown that this is not true of thoughtful Americans. I have had similar letters and books sent me from America, and know how much many Americans deplore the state of their marriage law. As to Germans, in evidence before the Commission which sat on this subject some thirty-five years ago, Dr. Pusey said that he had asked a German Doctor of Philosophy about these marriages of affinity and other marriage laws in his country, and the answer was, 'It makes a German cover his face in his hands for shame.' The change now imminent in the law which has governed England for 1,200 years, and the Christian Church for 1,800 years, is fraught with peril to society and religion, to the Church and to the nation. Noble lords will perhaps say that such an augury now comes only from theologians. Then I will refer to one who not long since was much honoured in this House, who then occupied the place so worthily filled by the noble and learned lord on the woolsack. He was a very good man, a very wise man, and he was a very advanced Liberal. He said that if this Bill for Marriage with a Deceased Wife's Sister ever became law the decadence of England was inevitable. Lord Hatherley said this, he wrote it, he printed it, he often repeated it. Surely we ought to pause before making such a change. If once the change is made, it must be remembered that the step will be irrevocable ; it can never be retraced.

Facilis descensus Averni,
Sed revocare gradum superasque evadere ad auras,
Hoc opus, hic labor est.

Nay ! it is hopeless, it will be impossible. If we once

‘put out the light,’ the light of Christian truth, the light of the law of God, ‘we know not where is that Promethean fire which can its former light relume.’ My lords, I trust that, even late as it now is, we shall refuse a third reading to this Bill.

THE BISHOP OF LINCOLN : Having unfortunately the unenviable distinction of precedence of old age before almost all the Bishops who were present at the second reading of this Bill, I then felt prompted—however disqualified by infirmity—to trespass on your lordships’ patience, but was deterred from doing so. Now, perhaps, I may crave your indulgence for a very short time. The noble earl who moved the second reading of this Bill referred with courtesy, but not without censure, to the action of the Episcopate with regard to that measure. He brought two complaints against the Bishops ; he complained that the Bill was prevented from becoming law a year ago by their votes ; and he complained also that some of the Bishops had stirred up an agitation against it in their dioceses. My lords, I do not claim for the Bishops a right to intervene on purely political questions, but I venture to think that there are other questions of even higher importance than mere political controversies. These are questions of Divine law, which are of the greatest concern to a State, because the Divine blessing depends on obedience to that law, and because a State cannot prosper without the Divine blessing. On such matters as these, I presume to think that the Spirituality are bound to speak and have a right to be heard. One of the most important of these questions is that which concerns marriage, which is dealt with in this Bill. The opinions of the Spirituality on such matters are entitled to special

consideration, and so far from its being an argument in favour of this measure that it was rejected last year by the votes of the Spirituality, this is rather a reason against it, and I would even claim it as a merit for the Spirituality that it averted, even for a single year, what will, I fear, prove a great national disaster. And may I add, my lords, that to my mind among the most cheering circumstances in the division on the second reading was this, that it was opposed by the highest judicial authorities of the realm, and that not a single Bishop voted for it, and twenty-two Bishops were united in voting against it. With regard to the noble earl's second complaint, I own to having felt uneasy when he proceeded to inveigh against what he called the agitation of the Bishops in their dioceses against this measure. My lords, I confess to have been a heinous culprit, a flagrant offender, in this respect. At every one of the five triennial visitations I have held of my diocese I have never failed to warn the clergy and laity against this measure, as contravening the law of God revealed in Holy Scripture, as interpreted and maintained by the Universal Church for fifteen hundred years. And why, my lords, did I do this? Because at my consecration I pledged myself solemnly to banish and drive away erroneous and strange doctrines contrary to God's Word, and because I should not have been true to that pledge unless I had done so. I confess, also, to have been guilty of delivering an address of warning against it at the Lincoln Diocesan Conference. I confess also to having put forth a form of prayer for use in my diocese for the maintenance of the Divine law of marriage. If, my lords, this is factious agitation, I must be content to be branded and denounced as a factious agitator, for with God's help I shall never desist from such agitation as this, in order that if this Bill becomes law, its bad effects may be neutralised by the moral and religious practice of society living above the level of the law. And now, a few words as to this measure itself.

Hitherto the Divine law of marriage, which is grounded on Holy Scripture and maintained by the Christian Church, but has unhappily been banished by the secular powers of Germany, America, and some of our colonies, has found a refuge and asylum in England and a shelter in your lordships' House ; and if the House of Lords had conferred no other benefit on this country and on Christendom, it would have been entitled to immortal honour and gratitude on that account. But now it is to be feared that England, as represented by your lordships, will be content to surrender her noble prerogative, and to descend from her high pre-eminence among the nations of Christendom, and to sit down as a learner at the feet of Germany and America, which have made terrible havoc in the law of marriage, and are reaping a miserable harvest from their own acts. And if this catastrophe is not averted, what will be the result? A double disruption. First, a breach in the law of marriage, and what will be the extent of that breach no one can tell. And secondly, a conflict between the law of the State, and the law of God as received by the Church. In other words, a disruption of Church and State. And what will be the issue of that conflict? It will probably affect our other national institutions. It may even disturb the foundation of this House and of the Monarchy itself. My lords, for nearly thirty years I have given careful attention to this subject ; and I am firmly convinced that this Bill is a violation of the Divine law, and I am sure that violations of the Divine law are followed by the infliction of Divine punishments, and therefore I have thought it my duty to raise my voice in the Divine Name against this Bill, and I thank your lordships for allowing me to do so.

THE BISHOP OF EXETER, who rose amid some cries of 'Divide,' said—I feel bound in conscience to speak on the subject, and I will not detain your lordships many minutes. If any one would look over the whole of the controversy, which has now gone on for many years, and observe the course of the debates in this House, he would feel struck by this fact, that whatever arguments were adduced in favour of the Bill, never on any single occasion has there been any clear statement of the principles upon which the restraints of marriage, so far as they are to be still maintained, are henceforth to be defended. He could not find on what ground they were to stand. The noble and learned lord who has lately spoken urged that we ought not to look to what future legislation might follow upon the present, but that we should consider whether this thing was right or wrong in itself. But it must be observed that this Bill goes, and from the nature of the case must go, far beyond deciding whether or not this kind of marriage is right in itself—it necessarily touches the principle upon which all marriage restraints are based. It is impossible if you strike down that rule in one particular instance to maintain the general principles upon which all the other rules had hitherto been defended. And, therefore, it is absolutely necessary to take into account not only the particular things which this Bill would sanction, but how it will affect the general law of marriage. In any case if we are to legislate we must take into account not only the direct but the collateral consequences sure to follow on our legislation. We must look over the whole field, and consider whether in doing something that is good we might not do something that is evil. But in this case, as I have said, this Bill takes away from us the ground upon which we stood.

Though this question has been discussed so long, perhaps your lordships will allow me to state once more the principle on which this marriage law depends. The

principle begins with the consecration of the family; the purpose is to defend and guard the household, to consecrate a circle within which there shall be the warmest, the strongest, the deepest affection, but not the very slightest touch or breath of passion, within which they shall neither marry nor be given in marriage, but be as the angels in heaven. That is what has consecrated all those restraints. And then it follows immediately that when one of this consecrated circle marries he brings his wife under the same consecration. She comes there to find in her husband's father and mother a new father and mother, and in her husband's brothers and sisters new brothers and sisters. And she, too, should be a consecrated thing in their eyes, and there should be the deepest and warmest affection between them, which should never be touched by the breath of passion. So, too, when the wife marries, she brings her husband within the same consecration. Part of her joy and delight is that she is giving her mother a new son, her brothers and sisters a new brother, to be hallowed and blessed by this consecration, founded on the Divine law. Here is a principle which we know we can defend, and here are limits so clear that we find them in the Bible plainly set forth; on the one hand, in the Old Testament, the doctrine that the husband brings the wife under the shield of this law—and on the other, by words to which it is impossible to give any other meaning, the words of Our Lord Himself, that whatever might have been the case in the past, thenceforward man and woman, in accordance with the original creation, are to be, in regard to this matter of marriage, precisely on the same level. If any man is not content with two such intimations of the Divine purpose, I do not see how such a man can use the Bible at all. I do not deny that twenty years ago if I had been asked for an opinion on this subject, I should have said, that though I could not bring myself to approve these marriages, I did

not quite clearly see why it was they were forbidden. But every successive year of study has always wrought the conviction deeper and deeper in my mind that there is a Divine purpose in the matter.

I feel the force of what has been said by the noble earl who spoke just now, that we have no right to make that a sin which is not a sin. But it is not only clear to me that the Christian Church is justified by the Bible in forbidding these marriages, but the reason is clear why they are forbidden. We are now asked to break in upon this principle, and to substitute what? Our natural instincts. I am thankful that we have such instincts—they are of the highest value. There is no question that these marriage laws would long since have passed away if these instincts had not been implanted in the human mind. But it is preposterous to expect that all these instincts should be of equal strength. With regard to marriage between a man and his mother the instinct is in the fullness of its power—every one admits its force. But as we go further and further away from the centre of the domestic circle, it is only natural that these instincts should become weaker and weaker. It is undeniable that they vary from age to age, and from nation to nation. Most of us look upon marriage between an uncle and niece with exceeding horror, but there are people who do not regard it with horror at all. We have been just told that the marriage of a man with his step-daughter would be looked upon with very great horror. But there are not a few who would say, 'What is the woman to him? She is not of his blood. Why should he not marry her?' We must look elsewhere than to natural instinct for the foundation of the law—to the Word of God. It is as clear as anything can be that if we are to have a definition of the line within which those restraints are to operate, it must be the line adopted by the Church from the beginning. That is the only line that we can draw.

Now I take the very deepest interest in this matter, because I believe that there is nothing in the world which touches upon the purity of family life so closely as legislation of this kind. I believe that sooner or later if this Bill be passed it must inevitably follow that there will be attacks upon the sanctity of marriage, and that we shall be asked to grant facilities of divorce to a far greater degree than they are granted now. I notice, at any rate, that in the countries where such marriages are allowed, those facilities of divorce are also allowed. We may be quite sure that to pass a law of this kind without in any way whatever attempting to lay down any principle upon which it is to rest, will not leave the question finally settled: we shall have a series of attacks upon the sanctity of marriage and upon its limitations, and we cannot foresee to what lengths all this may go. I was looking only a little while ago at a Message of a Governor of one of the States of the American Union to the Legislature of the State. There was a proposition before the Legislature for dealing in a particular manner with the property of divorced persons, and the Governor remarked, that already things had come to such a point that marriages were contracted almost with the expectation that they might very soon be dissolved, and his objection to the proposition was, that it would make the dissolution of marriages so easy that marriage would cease to be a permanent contract. The sanctity of marriage is preserved by the sense that the institution itself is something above human law, that by it men and women are united by a power that has its sanctions on earth, but rests on a higher authority. The greatest caution, therefore, is needed in touching such legislation as this, lest by-and-by it should be found that the remedy for the evils of which the noble lord has spoken have been dearly purchased by the degradation of religion and morality. In countries where the proposed relaxation has

been allowed, the surface is smooth enough to the eye, and morality and decency appear to be the rule ; but the sacred and holy bond of matrimony is no longer what it has been and ought to be. I have always advocated what have been called measures of progress, and I believe in the progress of the people, and that in their progress they will find true elevation ; but all depends upon its being true progress consistent with pure morality ; and it is the duty of every one who holds that their morality is now in danger to protest with all his strength against the passing of this Bill.

THE LORD CHANCELLOR : My lords, I will not detain your lordships for more than a very few minutes from the division which will now take place ; but, having on many former occasions in 'another place,' and once in this House, expressed my opinion on this subject, and this being possibly the last opportunity which I may ever have of doing so, I cannot reconcile it to my conscience not to add my voice to the voices of protest which have been addressed to your lordships against this Bill. My noble and learned friend (Lord Bramwell), with whom I am always sorry to differ, and with whom I am always glad to agree, said that your lordships were not here on this occasion to construct a Code of Marriage Law. That is perfectly true. We are not asked to construct a Code of Marriage Law, but we are asked to destroy one. The present Code of Marriage Law is, as my right rev. friend (the Bishop of Exeter) has said, consistent with itself, and rests on an intelligible principle. If you pass this measure, you abandon its principle, and you destroy its consistency. And, my lords, it is not merely an idle argument as to imaginary dangers and consequences, which those use who

try, and try in vain, to bring the advocates of this measure to state what is the principle on which, in their judgment, the law rests, or ought to rest ; it is not any mere cavil which leads us to say that we, at least, can find no principle, no resting ground for the sole of our feet, between this measure and the total abolition of all prohibitions in cases of affinity. I have always felt that the social, the moral, and the religious considerations bearing on this question are inseparably connected with each other ; and the moment you attempt, for the purpose of facilitating any one single kind of marriage, to sever those considerations, and to deny that religious or moral considerations affect it, to my mind it is an inevitable consequence that you will be unable to maintain them as applicable in other cases, in which other civilised communities have dispensed with other prohibitions which, for the present, you propose to maintain. I will not, however, rely only on my own apprehensions in this case ; that they are amply justified will be at once seen by the House when I have read part of an article which appeared in an extremely able, consistent, and advanced journal—*The Pall Mall Gazette*—on the day after the second reading of this Bill, of which it approves. On June 12, *The Pall Mall Gazette* said :

There is no doubt that a movement is going on all over the world for the relaxation of the strictness of the conjugal tie. Protestant countries have always had a tendency to be laxer with regard to it than Catholic countries ; but no Protestant country in time past has gone such lengths as some States in America now do, and some of our Colonies seem inclined to do. . . . That there is a critical issue before the civilised world in relation to the sanctity of marriage is very probable.

I should not like to have it on my conscience that I had accelerated the progress of that movement in this country. As for the consequences of this kind of legislation in the future, the same journal, a few days later, printed the letter of a clear-sighted and intelligent correspondent, who thus wrote :

The only legal preventive to love and barrier to marriage is, or ought to be, consanguinity. No Act of Parliament can make a sister-in-law into a real sister. Consequently, a man has no right to be more intimate during marriage with his wife's sister, than with his wife's cousin, friend, or young lady visitor.

Thus it is not only those who oppose the Bill, but those who support it, who foretell the breaking up of these, which to so many in all classes, and to myself among the number, are among the dearest, the most sacred, and most intimate domestic relations. I, for one, am not willing to renounce, or to have taken from me, the right to be more intimate with my wife's sister, than with her cousin, or friend, or lady visitor. Having said this much, which I felt I could not avoid saying, I must necessarily give my vote against the Bill.

Other Publications of the Marriage Law Defence Union.

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Marriage Law Defence Union Tracts.

No. XXXVII.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

Paper on the Marriage Laws read by John Walter, Esq., M.P.,

At the Reading Church Congress, October 1883.

WHEN Bishop Jewel was challenged by a learned man to give his opinion about certain words in Leviticus xviii., which seemed to warrant a man in marrying successively two sisters, he began his reply in these words : ‘ I would ye had rather taken in hand some other matter to defend. For it is not the best way, in my judgment, neither in these troublesome and doubtful times, to call more matters in doubt without just cause, nor in this intemperance and science of life, to open a gate to the breach of laws.’ Had Bishop Jewel lived in these days, which have certainly troubles and doubts enough of their own, he would probably have uttered his protest at Congress with still greater emphasis. For if there be any subject in the world upon which a general concurrence of opinion is more necessary to the welfare of society than another, it is surely the law which regulates the institution of marriage. Not even religion itself can claim precedence over it in this respect ; for a man’s religious opinions he may keep to himself, his marriage he cannot. ‘ A good marriage law,’ says the Report of the Royal Commission of 1868—adopting the language of Mr. Boyd Kinnear, who gave evidence before it—‘ a good marriage law ought to embrace the maximum of simplicity, and the maximum of certainty ; of simplicity, because it affects every class, and almost every person, the most

humble and illiterate as well as the most exalted and learned. . . . Of certainty, because it affects a contract and social relation, the most important that can arise between human beings, because it affects the foundations of society itself, and influences the fate—it may be the eternal fate—of innumerable individuals.’ If this be true as regards those regulations of marriages which relate to such questions as the respective ages at which marriage may be contracted, the hour and places at which, and the authorities, civil or religious, before whom they may be celebrated ; much more does it apply to the religious aspect of the subject, to the law laid down for our guidance in the word of God, and, until lately, accepted as such by the greater part of Christendom. No greater misfortune can befall society than to be divided into two contending factions upon a matter of this supreme importance ; one side being firmly persuaded that the maintenance of certain prohibitions is unauthorised by God’s word, and is therefore an unjust restraint upon human liberty, while the other is equally convinced that the prohibitions are founded on Scriptures, and therefore cannot be repealed by human authority. Such, however, is unfortunately the condition in which we find ourselves at this moment. A controversy, of which the issue is yet doubtful, has divided society upon this subject for the last half century ; battles have been fought in Parliament with alternate success ; and as in the game of the tug of war, the contending sides are sometimes reinforced by unexpected allies, so has it happened in this case. Meanwhile, the public at large—so far as I am able to judge—have been watching the struggle with curiosity rather than excitement, swayed by the authority of names or of parties, perplexed with the conflicting arguments on each side, and only waiting till the balance of evidence, presented in an intelligible form, inclines decisively to one side or the other.

In contributing my quota to the solution of the problem, I will occupy the few minutes at my disposal by stating (1) What was the law relating to this branch of the subject prior to the Act of 1835. (2) What was the effect of that Act, and (3) Which, in my judgment, are the main reasons against the change proposed in the Marriage Bill as last

presented to Parliament. According to Blackstone, the law of England considered marriage in no other light than as a civil contract. The holiness of the matrimonial state was left entirely to the Ecclesiastical law, the temporal courts not having jurisdiction to consider unlawful marriage as a sin, but merely as a civil inconvenience. The punishment, therefore, of annulling incestuous, or other unscriptural marriages, was the province of the Spiritual courts, which act *pro salute animæ*. But such marriages were not void *ab initio*, but voidable only by sentence of separation. They were esteemed valid to all civil purposes, unless such separation was actually made during the life of the parties. For, after the death of either of them, the Courts of Common Law would not suffer the Spiritual court to declare such marriage to have been void, because such declaration could not lead to a reformation of the parties. And therefore, when a man had married his first wife's sister, and, after her death, the Bishop's Court was proceeding to annul the marriage, and bastardise the issue, the Court of King's Bench granted a prohibition *quoad hoc*, but permitted them to proceed to punish the husband for incest. And be it observed that, under this state of the law, not only marriage with a deceased wife's sister was capable of being contracted without being *ipso facto* void, but all other marriages within the prohibited degrees might be contracted with similar impunity ; subject, however, like the former, to the risk of a suit in the Ecclesiastical courts, which, if successful, would render them void. The consequence was, as Sir W. Follett explained, that parties married within the prohibited degrees, lived together as husband and wife, and had children ; it was at the option of any person—though in one particular mode of proceeding—to make that marriage invalid, and the children illegitimate ; and, worse than that, it was at the option of either of the parties, indirectly, to get the marriage declared invalid. How it happened that for so many generations of lawyers and statesmen such a preposterous state of things should have been allowed to exist passes my comprehension. All that can be said is that it is not more extraordinary than the muddle which seems to have existed in every other department of law, and from

which modern statesmen and lawyers have been doing their best to deliver us. The scandal and mischief resulting from this state of the law had at length reached such a pitch that, in 1835, Lord Lyndhurst got an Act passed with the view of putting an end to it. In its passage through the House of Lords it was supported and even strengthened by Lord Brougham, while in the House of Commons it experienced some vicissitudes, and was only carried by the influence of Sir W. Follett, who persuaded the House to reinsert at the last stage of the Bill the second clause, declaring all future marriages within the prohibited degrees to be null and void, which it had actually struck out in Committee.

Now, the object of the Act was first to whitewash all marriages previously contracted within the prohibited degrees of *affinity* only, still leaving those of *consanguinity* to the tender mercies of the Ecclesiastical Court ; and secondly, to declare all marriages within the prohibited degrees, whether of *affinity* or *consanguinity*, to be henceforth absolutely null and void. Such is the history of the Act of 1835, which, strange to say, excited so little interest in the country that no mention of it whatever, beyond the mere title of the Act, is made in the Annual Register of that year. Such being the state of the law, it was proposed in the Marriage Bill lately before Parliament to take out of the list of prohibited degrees the particular case of the deceased wife's sister, and to pass an Act of indemnity for the benefit of those who had violated the law in that respect since 1835. But without wishing to prejudice the case of these unfortunate persons, it appears to me that there is all the difference in the world between the position of those who have contracted such marriages since the Act of 1835, and of those who did so prior to that Act. The Act of 1835 condoned the transgression of the law in a particular class of cases, on the ground that the defective machinery of that law had encouraged its transgression. It took the blame on its own shoulders and whitewashed the offenders. But while doing this it laid down the law for the future in the most distinct terms. It declared all such marriages hereafter contracted to be 'absolutely null and void, to all intents and purposes

whatsoever.' No Act could be more binding, no language more explicit. To select, therefore, a single class of forbidden marriages for the retrospective indulgence of Parliament, to claim for the parties who have transgressed the law the restitution, as it were, of rights of which they have been unjustly defrauded, without the slightest regard to the case of others who might urge equally strong claims to consideration, is a specimen of amateur legislation, for which, I believe, it would be hard to find a parallel.

But as the case of the deceased wife's sister is the only one which it has hitherto been attempted to except from the prohibited degrees, let us consider the arguments which are mainly relied upon in support of such a change. They are, I believe, 1. That in Leviticus xviii. 18, an implied sanction is given to such marriages. 2. That the wife's sister will make the best stepmother to the children. 3. That there is no reason why affinity should be any bar to marriage. 4. That, as society is divided in opinion on the subject, the marriage in question ought to be permitted, because it only concerns the parties themselves. Now, to take these arguments in order, I would observe, first, that if the marginal rendering of the text (*'one wife to another'*) be correct, the argument derived from this verse falls to the ground, and the passage resolves itself into a simple prohibition of polygamy; an interpretation which I think is far more reasonable than the other, because I cannot conceive that, in the case of polygamy, the wife's sister is the only one whose presence would be likely to cause discomfort in the family. Besides, as Bishop Jewel observes, 'There be otherwise women enough to have choice of, so that no man can justly say that necessity drove him to marry her whom, in common manner of speech, he first called sister.'

2. The argument that the sister-in-law will make the best stepmother, simply begs the question. It can only be a matter of opinion at the best, and it is certainly not held by many who are quite as good judges of such matters as those who maintain it.

3. The argument mainly relied upon, and which lies at the bottom of this question, is that affinity should be no bar to marriage. But it is to be observed that those who use

this argument have not the courage of their opinions. They have not proposed to relax the bond of affinity in the case of the brother's wife, the wife's niece, the stepdaughter, or the other prohibited degrees of affinity; when pressed for an answer to this they can only say, 'Oh! we have no objection, but at present there is no demand for such marriages.' But can it be sincerely contended that restrictions upon marriage founded *ex-hypothesi* upon a Divine ordinance, are to be relaxed from time to time, as the demand for their relaxation arises?

4. But it may be said that, admitting that there is much to be said on both sides, no hardship would be inflicted upon those who do not wish to marry their wives' sisters by the concession of that privilege to those who do. But a change of this nature in the law of marriage affects, not only the *status* of those for whose sake it is made, but also that of society at large—of all those whose social relation to each other is changed by virtue of such an alteration of the law. Society does unquestionably permit much greater familiarity and freedom of intercourse between persons within the prohibited degrees, than it does to those outside them; and therefore every man's position with regard to his sister-in-law would be placed on a different footing were the restriction on their marriage removed. It is sometimes said that such marriages are not uncommon in the United States, and that they are not attended with any bad consequences. But if they are common in the United States, it by no means follows that they are a sign of progress. The custom exists among the Red Indians as well, and in Schoolcraft's history of those races I find it stated, that with respect to the Kenistenos—a branch of the Algonquins—that 'when a man loses his wife, it is considered his duty to marry her sister, if she has one; or he may, if he pleases, have them both at the same time.' I am told that the same custom prevails in many other tribes. But if an exception is to be made in favour of the wife's sister, on what ground is it to be refused to her niece, who is further removed from her in point of affinity, and is often quite as well fitted in other respects to take her place? Again, on what ground is it to be refused to the brother's widow, the analogy between whose case

and that of the wife's sister was held by such authorities as Bishop Jewel and Jeremy Taylor to be complete? I know that analogies will not bear straining too hard; and I have heard it argued that there is the same kind of difference between the two cases as there is between polygamy and polyandry, and that there is a natural repugnance to the latter which there is not to the former. But just as the Red Indians allow polygamy, even with the wife's sister, so did our British ancestors practice polyandry. Julius Cæsar has told us that by far the most civilised race amongst them were the people of Kent, and this is the account he gives of their marriage customs: '*Uxores habent deni duodenique inter se communes: et maxime fratres cum fratribus, parentesque cum liberis.*' So difficult is it to say to what lengths people may go, when once their minds are unsettled upon the subject of marriage. There is no doubt that in these days free and easy notions prevail in some countries on the subject of divorce, and, in a little book of advanced opinions on things in general which I was reading the other day, the author suggests that every three years or so married couples should be allowed to reconsider their position. It is not, I believe, generally known that at a certain period of the French Revolution, the page in the *Moniteur* which recorded the births, deaths, and marriages, headed the list with 'divorces,' in the proportion of about one to five of the marriages, occasionally in a much greater proportion. In conclusion, it appears to me that there are but three possible courses open to us in this matter. (1) To maintain the prohibited degrees of affinity intact. (2) To abolish them altogether. (3) If they are to be partially relaxed, to find valid reasons for limiting the exception to the case of the wife's sister. I believe the last to be logically impossible; I do believe that the country would shrink from adopting the second, and I therefore hope and trust that it will abide by the first.

EXTRACTED from the *Moniteur* of October 26, 29, 31, 1793.

ETAT CIVIL.

October	25.—Divorces	7.	Marriages	24.
„	26 — Divorces	6.	Marriages	30.
„	27.—Divorces	6.	Marriages	9.
„	28.—Divorces	7.	Marriages	31.
„	29. — Divorces	7.	Marriages	28.
„	30.—Divorces	6.	Marriages	10.
November	4.—Divorces	5.	Marriages	30.
„	5.—Divorces	1.	Marriages	22.
„	8.—Divorces	6.	Marriages	29.
„	9.—Divorces	9.	Marriages	34.

Also to be had at the MARRIAGE LAW DEFENCE UNION OFFICES :

Paper on the MARRIAGE LAWS *read by the* ARCHDEACON OF MIDDLESEX *at the* Reading Church Congress, *price* One Penny.

Marriage Law Defence Union Tracts.

No. XXXIX.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

The Principal Arguments against the Deceased Wife's Sister Bill.

BY J. THEODORE DODD, M.A. OXFORD
AND OF LINCOLN'S INN, BARRISTER-AT-LAW.

PRELIMINARY.

A PAMPHLET, entitled 'A Summary of the Chief Arguments for and against Marriage with a Deceased Wife's Sister,' has recently been largely circulated by the Marriage Law 'Reform' Association. It professes to be a summary of the more prominent arguments on both sides, and states the authorities from which it has been mainly compiled. In favour of the prohibition, and therefore against the Bill, are the papers or tracts of Dr. Pusey and Mr. Keble, and portions of the evidence taken before the Marriage Commissioners in 1847-8. It will be seen that the writer of the 'Summary' has treated the opposition to the Bill as though it proceeded merely from one party in the Church of England. The list of the Committee of the Marriage Law Defence Union, the proceedings in Convocation, the resolutions of Church Conferences, and the votes in the House of Lords, show that this is not the case.

The vigorous opposition of men like the Bishops of Liverpool, and Gloucester and Bristol, the speeches of Lord Coleridge, and the late Duke of Marlborough, prove that the defence of the marriage law of Church and State is not conducted solely by one party in the Church of England,

or by the clergy alone. So the action of the Presbyterian Churches in Scotland, and the strong line taken by Cardinal Manning and the (R.C.) Bishop of Emmaus, show that other religious bodies besides the Church of England vigorously oppose the change.

It is unfortunate that the 'Summary' does not cite any of the numerous tracts lately issued by the Marriage Law 'Defence' Union. They are the most recent literature on the subject, and they present numerous arguments against the Bill, from different writers, clergymen and laymen. Instead of employing these for the purpose of giving a *resumé* of the objections to the alteration in the law, the 'Summary' resorts mainly to the works and words of two clergymen, both eminent High Churchmen, who wrote and spoke on the question many years ago.

Notwithstanding any care the writer of the 'Summary' may have used to present the arguments against himself in a forcible manner, he has done them less than justice, and has made (doubtless inadvertently) numerous mistakes, which it is necessary to correct. It will, therefore, be needful to set out shortly some of the more prominent arguments against the Bill, while for further details and authorities the reader is referred to the tracts published by the 'Defence' Union, given in an Appendix below (see p. 40), as it will be convenient to refer to them by the numbers affixed to them. We shall also indicate some of the mistakes made by the 'Summary,' which is in two ways an important paper. *First*, because it contains concisely the arguments *for* the Bill, which are now relied on by the Reform Association; and, *secondly*, because it shows conclusively that if the union of a man with his deceased wife's sister is to be declared lawful marriage, the principle of our marriage law is gone, and other innovations of a worse character must logically follow.

Of course it has often been pointed out that logically this

result must be the calamitous conclusion of the passing of the Bill, while the example of other countries has been correctly cited as additional proof that the result which logically might be expected, does, in fact, follow. But it is important to show, from the arguments used by the Reform Association itself in favour of their Bill, that to concede this one point, and to break the marriage law as at present received, is inevitably to make a way for other innovations, which must create changes in the whole social life of the nation, and introduce a modern lax morality which will permit and sanction what all decent people now feel and declare to be immoral.

The chief objections to marriage with a deceased wife's sister are stated in the 'Summary' (p. 1) to be—(1) Prohibition by Scripture ; (2) Condemnation by Early Church ; (3) The Canons of the English Church ; (4) Social Inexpediency.

We should prefer to state them as follows :—(1) Prohibition by Scripture ; (2) Condemnation by the Early Church, and the Church generally ; (3) The Law and Canons of the English Church ; (4) Social Inexpediency ; and we must add as a fifth reason, the impossibility of preventing the legalisation of other unions of even a more objectionable description.

I.—PROHIBITION BY SCRIPTURE.*

The Divine law expressly forbids marriage with any that is 'NEAR OF KIN.'†

* The Scriptural argument is very concisely stated by Mr. F. Calvert, Q.C., and very plainly set forth in No. xvi. by Mr. Vincent. It is fully treated by the Archdeacon (Hessey) of Middlesex (No. iii.), the Bishop of Lincoln (Nos. i., xxii.), and Dr. Candlish (No. xxv.), and is urged in other of the tracts, and speeches contained in the tracts, by Bishop Temple of Exeter (No. ii.), and other Bishops of the English Church (Nos. ix., xxxv.), Scotch and Irish Presbyterian

† Leviticus xviii. 6.

4

This prohibition is introduced by most solemn words, and is followed by the reminder, 'I am the Lord.'

After this general prohibition of marriage with 'near kin' we find, in the subsequent verses of the same chapter of Leviticus and in a subsequent chapter, a considerable number of relations and connections mentioned with whom marriage is expressly prohibited; and we observe that the persons whom a man is forbidden to marry may be grouped into three different classes.*

(a.) *His own relations:*†

Those mentioned are father's sister, mother's sister, mother, father's daughter, mother's daughter, son's daughter, daughter's daughter; in other words, aunt, mother, sister (including half-sister), and grand-daughter.

(b.) *His own relations' wives:*

Those mentioned are father's brother's wife, mother's brother's wife, father's wife, son's wife, brother's wife; in other words, aunts by affinity, step-mother, daughter-in-law and (one kind of) sister-in-law.

(c.) *His wife's own relations:*

Those mentioned are wife's mother, wife's daughter, wife's son's daughter, wife's daughter's daughter; in other words, mother-in-law, step-daughter, step-son's daughter, step-daughter's daughter.

Now it is quite clear that the list of relations with whom

Divines (Nos. iv., viii.), American Divines (No. xxxvi.), Mr. Beresford Hope (No. v.), Lord Cairns (Nos. xii., xxvii.), the Duke of Argyll (Nos. xiii., xxxv.), Lord Hatherley (Nos. xiii., xxx.), &c. Tables of Degrees which afford great assistance will be found in the tracts of Archdeacon Hessey and Rev. T. Vincent.

* See Leviticus xviii. xx. See No. iii., pp. 6-10, and also No. xvi., pp. 6, 7, where all the degrees are plainly set out, and those which are expressly forbidden are distinguished and scriptural references given.

† I use 'own relations' in the sense of 'blood relations.'

marriage is *expressly* forbidden does not comprise all the relations with whom marriage stands forbidden by the Bible. For it will be seen that the above list does not comprise a man's own daughter, so that a man is never expressly (that is, in so many words) forbidden to marry his own daughter. Yet he is forbidden expressly to marry his wife's daughter, and also his own grand-daughter.

So a man is not *expressly* forbidden to marry his own niece, *see* page 6, below.

Of course the conclusion is obvious, that the list of specified relations is not exhaustive or complete, and that the prohibitions of Holy Scripture as to marriage must not be limited to the relations expressly specified.

We have shown that the list of relations does not comprise the whole of the prohibited degrees, so we go on to see whether, although marriage with a wife's sister is not expressly prohibited, it is so by necessary implication. The Bishop of Lincoln lays down that it is included in the 'Code' of Marriage Law contained in Levit. xviii.

That Code expressly forbids a man to marry certain near *kinswomen of his wife*. It forbids him to marry his *wife's daughter* and his *wife's grand-daughter*. And why? Because they are his wife's near kinswomen (Levit. xviii. 17). And surely her *sister* is also her 'near kinswoman.' Indeed a *sister* is expressly called a 'near *kinswoman*' of her brother and her sister in verses 12 and 13. And therefore it is perfectly clear that this Code forbids a man to marry his wife's sister. Accordingly our Church has declared in her 'Table of Degrees' that a man may not marry his wife's sister; and she pronounces, on the authority of God's Word, such a marriage to be unlawful and incestuous.*

The same result may be arrived at in another way, viz., by implication and inference—the inference being that the law as to men and women is on the same footing, and that, as Levit. xviii. 16 expressly forbids marriage with a hus-

* No. i., p. 4.

band's brother, therefore by implication it forbids marriage with a wife's sister.

Archdeacon Hessey says : *

Some persons, however, boldly object to any inference whatever being allowed. They will have nothing forbidden unless it is set down in so many words. Now, let us see to what this will lead them.

1stly. It is not *said* that a father may not marry his daughter. *We infer* that to be unlawful thus : it is said that a son may not marry his mother ; conversely, *we infer* that a mother may not marry her son ; and then, by analogy, *we infer* that a father may not marry his daughter. But this is a prohibition by inference ; it is not found in so many words.

2ndly. It is not *said* that an uncle may not marry his niece. *We infer* that to be unlawful thus : it is said that a nephew may not marry his aunt ; conversely, *we infer* that an aunt may not marry her nephew ; and then, by analogy, *we infer* that an uncle may not marry his niece.

3rdly. In the same way, *it is inferred* that the marriage of a man with his wife's sister is unlawful. It is said that a man may not marry his brother's wife, *i.e.*, that a woman may not marry her husband's brother, *i.e.*, two men who are brothers ; and this case is exactly analogous to the prohibition of a man's marriage to his wife's sister, *i.e.*, two women who are sisters.

Those, therefore, who will admit nothing but what is set down in so many words to be Scripture, are brought to this : they must either allow all these inferences, or none of them ; *i.e.*, if they allow a man to marry his wife's sister, they must allow an uncle to marry his niece, and even a father to marry his daughter.

There is another strong reason for the admission of inferences. The prohibitions on the woman's side of the Table are all of them of this character. The restrictions upon marriage in the chapter of *Leviticus* are addressed to men. *We infer* the woman's side from what *is said* to men.

Besides the above arguments, it is also urged by several writers that the prohibition of marriage with 'near kin' at the commencement of chap. xviii. must be taken to govern the whole chapter, and that the instances expressly prohibited must be taken as examples and illustrations of

* No. iii., p. 10.

what 'near kin' means, rather than as forming a complete code, and that they include relations both by blood and marriage, and place them on the same footing throughout.*

THE NEW TESTAMENT.

Also, when it is said that the marriage is forbidden in Holy Scripture, the New Testament, as well as the Old, is emphatically intended. The New Testament contains very little about the details of the Marriage Law,† but it lays down principles, and one of these is contained in the words, 'They twain shall be one flesh.'

It should be observed that the words are not merely 'they twain shall be one,' which might point to some mental union or moral harmony, but 'one *flesh*', indicating an actual corporeal relationship.

The 'Summary' says with approval :‡

Patrick, Bull, and the other commentators, all agree that the words are intended to express the extreme intimacy of a new relation, exceeding that of father and mother—and *nothing more*.

Well, and as Moses forbids marriage with the sister of a father, so is marriage to be forbidden to a sister of a wife, because the wife is nearer than father or mother—a very close alliance we should say !

MORAL EQUALITY OF SEXES.

Also it is one of the effects of Christianity, as understood in the present day, to elevate woman to a moral equality with man, especially with regard to marriage. Polygamy, or the plurality of wives, which was tolerated among the

* See No. xxv., p. II.

† It is clear that the Levitical Marriage Law is binding on Christians, for if it is not there is nothing in the Bible forbidding a man to marry his own nearest relations.

‡ Page 4.

Jews, is considered to be forbidden to Christians, though no express prohibition is to be found in the New Testament. Polyandry, or the plurality of husbands, was not allowed under the Old Testament, and now in this respect the sexes are put on an equal footing.

On what principle, then, can marriage be permitted to a man with his wife's sister, if it is forbidden to a woman with her husband's brother? The latter is expressly forbidden by Leviticus xviii. 16, so that, unless there is 'one law for the man and another for the woman,' the latter must be forbidden also.

It is no doubt quite in accordance with barbaric ideas that, by marriage, a woman should be taken into her husband's family and become a relation to his relations, while he should continue to be no relation to her relations, as outside of her family. This idea would naturally arise in nations which were accustomed to 'marriage by capture,' or 'marriage by purchase,' but it is entirely contrary to our modern notions of equity and equality. Still less is it in accordance with the words of Christ, to which reference has been previously made. When we hear that the *man* 'shall leave father and mother'—we find no suggestion that the relationship contracted should be by the woman alone.

So it is submitted that if we read Leviticus by the light of the Gospels, marriage with a wife's sister must be forbidden by Holy Scripture.

REMARKS ON STATEMENTS IN THE 'SUMMARY' WITH RESPECT TO INTERPRETATION OF HOLY SCRIPTURE.

It seems hardly necessary to add the fact that, by marriage, a relationship is created between husband and wife ; and the doctrine that by such relationship marriage with near relations of each other is barred, does *not* in the least

show, or tend to show, that marriage of cousins is forbidden.* Also it does *not* 'lead to the sacramental character of marriage held by the Roman Church,' &c.† This last is shown at once by the fact that the above doctrine is held by the Scotch Presbyterian churches, which forbid in the most stringent terms‡ marriage with a deceased wife's sister, and yet expressly declare that marriage is not a sacrament, and hold Rome and Romish doctrine in the utmost abhorrence. We may also refer to the Protestant Churches and authorities mentioned at page 25 below. The 'fearful consequences' darkly hinted at in page 4 of the 'Summary,' and page 10 of *Συγγένεια*, § need not be dreaded because they do not, and cannot, exist. They are grounded upon a misapprehension of what constitutes affinity.

AFFINITY.

Affinity exists between a husband and his wife's relations, and likewise between a wife and her husband's relations. There is no affinity or relationship between the relations of the husband and the relations of the wife. The wife becomes a member of the husband's family, and the husband becomes a member of the wife's family, but there is no fusion of the two families, so no affinity created between them.

Thus, a widower and his son may marry a widow and her daughter; a man may marry the widow of his deceased brother-in-law; and finally, two brothers may marry two sisters. And the reason is plain, such marriages are not expressly, or by implication, forbidden in Holy Scripture. There is no case, among those condemned in Leviticus, of a

* See 'Summary,' p. 4.

† See 'Summary,' p. 4.

‡ See Westminster Confession Cap. 24 s. 4 cited in No. ix., p. 14.

§ This is one of the works in support of the Bill quoted by the 'Summary.'

marriage between a man and his wife's relations *by marriage*. And although it is declared that a man is one flesh with his wife, he is not declared to be 'one flesh' with his wife's relations. In modern language, he marries his wife, and not his wife's relations, but they become his relations. Of course, the object of the argument in Συγγένεια is to throw ridicule upon the doctrine of affinity.

Strong Condemnation of Marriages of Affinity in Holy Scripture.

The attention of those persons who do not believe that near affinity renders marriage unlawful, should be directed to the wording of Holy Scripture, and the punishments therein denounced.

Union with a daughter-in-law is pronounced 'confusion,'*—contamination; with a wife's daughter, or her granddaughter, or her mother, it is called 'wickedness.'†

Death is the punishment for the marriage in several cases of affinity;‡ while for marriage with a man's own half-sister or aunt, no definite punishment is annexed, but 'they shall bear their iniquity.'§

STATEMENTS IN THE 'SUMMARY' (CONTINUED).

Before leaving this part of the subject, it will be well to examine some of the statements made in the 'Summary.' It says (p. 3) :

Some of the connexions prohibited in Leviticus are clearly *not* naturally impure, morally wrong. One is a mere legal

* Leviticus xx. 12. It is the same word as that used of a horrible crime in Leviticus xviii. 23.

† Leviticus xviii. 17; xx. 14. The same word is used of adultery and another horrible wickedness. Judges xxxi. 10; *ib.* xx. 6; *see ib.* xix. 30.

‡ Leviticus xx. 11, 12. 14.

§ Leviticus xx. 17, 19. As to condemnation of unions of near affinity, *see also* Ezekiel xxii. 10; and the case mentioned by St. Paul in I Cor. v.

II

defilement, constituted such by Leviticus itself (ver. 19). Another, a marriage, by Leviticus first prohibited, had been contracted by faithful Abraham without a reproach. Another is a marriage forbidden under certain circumstances, and in different circumstances commanded (Deut. xxv. 5). Moreover, marriage with a *deceased wife's sister* is not prohibited at all in Leviticus.

The marriage contracted by Abraham was a marriage with his half-sister. Sarah was the daughter of his father, but not of his mother.* Now let us compare the 'Summary' with the Bible. We are told in Leviticus xx. 17, that such a marriage is 'a wicked thing, and they shall be cut off in the sight of their people . . . he shall bear his iniquity.'

Whatever may be thought of such a marriage in the case of Abraham, it would have been 'wicked' for an Israelite, after the time when Leviticus was written, and *a fortiori* so for a Christian. It should never be forgotten that the Mosaic dispensation was an advance on the Patriarchal, as the Christian was on the Mosaic dispensation. Abram was married to Sarai before his call.

Put plainly, the Marriage Law 'Reform' Association here suggests a standard of morals which obtained nearly 2,000 years B.C., but was rejected in the time of Moses, and affirms that marriage with a half-sister—the daughter of a man's own father—is *not* 'morally wrong.'

The other marriage, which the 'Summary' says is 'commanded' in Deut. xxv. 5, is the Levirate, as to which see page 13 below.

We proceed to the next passage in the 'Summary':

Marriage with 'near of kin' is undoubtedly forbidden, but a wife's sister is *not* 'near of kin,' is not of *any* 'kin,' to the husband. Whom God includes in 'near of kin' is plainly shown in Lev. xxi. 2 (Jer. Taylor, vol. xii. p. 325). All beyond that is human suggestion. For ages disregard of this distinction condemned marriage of COUSINS as 'incestuous and adulterous.'—(Συγγένεια, Pref. xii. and p. 24).

* Genesis xx 12.

Now Leviticus xxi. 1-3, cited in this passage, lays down rules as to the priests' defiling themselves for the dead. It prohibits such mourning, except for 'near kin,' and explains this to mean father, mother, son, daughter, and brother, and the sister who is a virgin, and is nigh to him. Hence this does not include a man's married, or widowed, sister. According to the arguments of the 'Summary,' because the rules as to the priests' mourning in Leviticus xxi. explain 'near of kin' for that special purpose to have a particular meaning, the phrase must have the same meaning when it is used in a prohibition of marriage in Leviticus xviii. 6. The answers to this argument are (1) that the phrase has a special interpretation clause in Leviticus xxi. which it has not in Leviticus xviii., so that in the latter it must be construed in its natural meaning ; (2) that the 'Summary's' argument results in showing that a man's own widowed sister is not his 'near of kin,' and that the prohibition to marry his 'near of kin' prevents his marrying his maiden sister, but not his widowed sister !

Marriage of cousins is not forbidden in Leviticus, either expressly or by implication. This is seen at once, because first cousins are in the 4th degree or step of relationship, while there is not a single case among the list of those who are expressly forbidden* which is beyond the 3rd degree. Cousins are 'kin,' but they are not 'near kin.' Hence, then, no inference or implication forbidding it can be drawn from Holy Scripture.

The 'Summary' refers to Leviticus xviii. 16 (which forbids marriage with a brother's wife) as follows :

The prohibition in ver. 16 is certainly not grounded on anything *incestuous* in the marriage ; for in Deut. xxv. 5, it is *commanded* if the brother died childless ; and is so commanded for

* No. i., pp. 5, 6. There are different ways of counting the degrees, but, whichever way we count, 'cousins' are outside the limits, and so allowed.

a reason involving no absolute necessity ; for if the brother refused (as he might) the next kinsman was to supply his place. God cannot be imagined to command a marriage 'incestuous,' 'naturally impure,' 'morally wrong':—this would be to make Him the Author of evil, not of 'ALL GOOD.' In the case of the seven brethren marrying, successively, the same woman, our Lord intimated no objection to the marriage.

The 'Summary' omits to notice that in Leviticus xx. 21, union with a brother's wife is again prohibited, and that there it is called 'an unclean thing' (or, in the margin, 'a separation'), and it is added, 'They shall be childless.'

THE LEVIRATE.

Assuming for the purpose of our argument that the man intended is literally the husband's brother, it is quite clear that God cannot be imagined to command a marriage which is 'morally wrong,' &c. ; for if God commanded anything it would not be sin or 'morally wrong.' But it does not follow that because a thing is right when God commands it, that a similar action is right when He does not command it. And marriage with a brother's wife is expressly forbidden in Leviticus xviii. 16. The Levirate 'marriage' was for a special object, to keep up the family name and property.* It is usually stated also that the great desire of each Jew was to have the Messiah born in his family, and that the Mosaic relaxation or dispensation of the general law was made to satisfy this desire, and the above special objects. But probably the Levirate 'law' is not really a command, but rather a permission. No doubt the word 'shall' is used, but still it is evident that a man was not compelled to marry his brother's wife, but might leave her for another kinsman, only he was compelled to go through proceedings which would make it certain that he abandoned his legal rights.

* See No. iii. p 14.

HINDU FORM OF THE LEVIRATE.

To understand the Levirate properly we must compare it with the laws of other nations. The Levirate law seems to be but a particular form of a much wider and more general institution called by the Hindus by the name of the Nigoya. By this, where a man died without a son, real or adopted, a son born of his widow, not from the husband himself, but from his brother or nearest kinsman, was reckoned as his son.*

The following account is given in 'Gautama,' the oldest of the Hindu law writers :

A woman whose husband is dead and desires offspring may bear a son to her brother-in-law. Let her obtain the permission of her Gurus.† On failure of a brother-in-law she may obtain offspring by cohabiting with a Sapinda, a Sagotra, a Samânapravara,‡ or one who belongs to the same caste. Some declare that she shall cohabit with nobody but a brother-in-law.§

Gautama does not seem to contemplate that the widow will necessarily become the wife of the levir or brother-in-law, and certainly the whole object of the transaction seems to have been the 'raising up seed' to the husband, not to arrange a second marriage.||

The son so begotten was reckoned in Hindu law, as in Jewish, not the son of his natural father, but the son of his mother's husband.¶ This practice of obtaining a son appears to have extended with various modifications over

* Maine 'Early Law and Customs,' p. 100.

† Spiritual directors.

‡ Persons belonging to the same race.

§ Maine, 102.

|| In some cases where the husband from age or infirmity was precluded from offspring the levir might supply his place at his request even in his life time. Maine, 101-104; Hearn's Aryan Household, 103. Compare Plutarch's Lives, Solon. c. 20.

¶ See Maine, also sup. and p. 108.

many branches of the human race. There are traces of it in the laws of the Spartans and Athenians.*

In the Tagore Law Lectures of 1880† we find a large number of Hindu authorities quoted which recognise the Levirate in its widest sense.

Havita reckons among the 'sons' which a man may have, the 'son of his wife begotten by a kinsman,'; and *Vasishtha*, in the same way, reckons the son lawfully begotten of a man's wife, or widow, by a kinsman.‡ Indeed, this description of son appears to be recognised generally by the ancient Hindu authorities, though they differ as to the exact position such a son should occupy.

Manu says :

If the widow of a man who died without a son raise up a son to him by one of his kinsmen, let her deliver to that son, at his full age, the collected estate of the deceased, whatever it is.§

Mr. J. D. Mayne also recognises that the Levirate is a special form of the Nigoya, and points out that the levir did not take his brother's widow as a wife. He proceeds to show how that, when higher feelings of delicacy and morality grew up, this plan of securing issue in the case of a wife, while the husband was still alive, was held repulsive.||

And as that practice died away, the usage of authorising it in regard to a widow would naturally die away also, though it might continue longer in the latter case than in the former.¶

The Nigoya, in its more offensive aspect, has become nearly if not quite obsolete ; and, if it still lingers in Orissa** (which is doubtful) it is greatly reprobated among the higher

* Maine, 100. Hearn, 103.

† The Principles of the Hindu Law of Inheritance by Rajkumar Sarvadhikari, Tagore Law Professor, &c. Tagore Lectures, 1880.

‡ Id., p. 246.

§ Id., p. 274.

|| Hindu Law and Usage, pp. 64-66.

¶ J. D. Mayne, p. 65.

** See Mitra, p. 115.

classes. The practice has been abrogated, but marriage with an elder brother's widow still exists in some districts and some classes.*

EWALD ON THE LEVIRATE.

The Levirate law also exists in Arabia and in the tribes of the Caucasus, but with some variations in form ; and, as Ewald† remarks, it was to be found among nations completely alien from the Jewish.‡

Ewald also states that the drawing off the shoe in Court was originally what a man did himself when he gave up a right, and was consequently intended to signify nothing but the renunciation of a right and of a possession,§ and he explains the action permitted to the rejected widow as connected with this custom.

RESULT OF INQUIRY INTO THE LEVIRATE.

It may be said, then, that the so-called Levirate law was a survival of ancient customs,|| still more objectionable to modern ideas, and was a relic of an early stage of society, tolerated, rather than absolutely commanded ; and that probably the formal degradation which befell the brother-in-law or kinsman, who refused to conform to the custom, was in substitution for some real heavy punishment, which would previously have been awarded him. Also as the brother-in-law would usually already be married it would involve polygamy or a union of a polygamous nature.

* Tagore Lectures, 1880, p. 528.

† Smith Bible Dict., vol. ii. 246.

‡ History of Israel, p. 209. He also mentions Africa (citing Livingstone's Travels i. s. 222), and ancient Armenia as well as Caucasians, ancient Hindoos, and Persians. As Ewald thought that Leviticus permitted marriage with a deceased wife's sister his testimony is the more valuable.

§ Ewald, 210 ; see *ib.* p. 180.

|| See the cases of Judah and Tamar, &c.

If the history of the Levirate throws any light on the question of the wife's sister, it shows, (1) that to permit such marriages is a distinct retrogression ; (2) that it will be impossible, if marriage with a wife's sister is allowed, to refuse to pass an Act enabling marriage with a husband's brother.

I must not forget to add that some authorities hold that not the husband's brother, but some kinsman of a more distant relationship is intended in the Bible,* but I do not think this view, at present, proved, so I do not lay any stress upon it.

Another view, that the union between the husband's brother and the widow, was not originally really marriage, finds support both from the Hebrew word employed (translated by Ewald to 'marry-at-law'), and from the whole scope of the transaction, as well as from the Hindu analogies.

THE SEVEN BROTHERS.

With regard to the case of the seven 'brothers' successively marrying one woman, it is true that our Lord intimated no objection to the transaction, but He said the narrators 'greatly erred', and 'knew not the Scriptures, neither the power of God', so that it must not be inferred that He approved of it. It is also doubted by some authorities whether the seven really were 'brothers' in the strictest sense of the word.

There is no doubt that in the present day such a series of marriages would be entirely opposed to modern ideas of decency ; but if the Deceased Wife's Sister Bill is passed, it is difficult to see how the legislature can refuse to make them legal. It is unfortunate that the arguments used in support of the Bill should often involve consequences even more repugnant than the Bill itself.

* See Canon Trevor's letter to the *Guardian*, January 16, 1884, p. 93 ; and No. ix., p. 7.

LEVITICUS XVIII. 18.

The authorised version has in the text of Leviticus xviii. 18 :

Neither shalt thou take a wife to her sister, to vex [her], to uncover her nakedness, beside the other in her life [time.]

But in the margin it reads 'one wife to another,' instead of 'a wife to her sister.'*

The Bishop of Winchester (then of Ely), when speaking in the House of Lords in 1870, said of this passage :†

. . . it may be observed that the words rendered 'wife to her sister,' or more correctly, 'woman to her sister,' occur over and over again in the Old Testament, as does the parallel case, 'man to his brother,' according as the antecedent is masculine or feminine, and that wherever else they occur they are and must be rendered simply 'one to another.' Thus, in Exodus xxvi. 3, it is said five curtains 'shall be coupled one to another,' literally 'woman to her sister.' In Ezekiel i. 9, iii. 13, the wings of the living creatures are joined one to another, literally 'woman to her sister.' In Exodus xxv. 20, the faces of the cherubim were one towards another, literally ('face' being masculine) 'man to his brother.' So in Genesis xiii. 11, where human beings are spoken of, they are said to separate one from another, literally 'man from his brother.' This was, then, an idiomatic expression of constant occurrence; and our translators, who were ripe scholars, and who often put their most important renderings in the margin, have placed in the margin here, 'one wife to another,' and have referred, in vindication of this translation, to Exodus xxvi. 3, where the same words must be rendered 'one to another.'

If this view of this verse is correct, the verse seems to be either (1) a prohibition of polygamy, or (2) a command that a man shall not take a new wife merely for the purpose of vexing or spiting the old one.

* The question is one as to translation. The 'Summary' is mistaken in saying it is a 'variation.' It does not depend on the Karaites. See No. ix., p. 8.

† No. ix., p. 6.

Rev. C. Forster says :

If, therefore, this expression* designates in Lev. xviii. 18 the blood relationship of two sisters, I can only say that *this is the solitary instance in the whole Bible where it has such a meaning.*

This remark of Mr. Forster is cited with approval by the Bishop of Lincoln,† who adds :

Out of two-and-forty times, then, in which this Hebrew idiom occurs, it is agreed on all hands that in forty-one instances it has no reference to the blood relationship of two brothers or two sisters, but simply means two persons or things of the same kind. (See also the analysis of the passages in Dwight's *Hebrew Wife*, pp. 84-91.)

Mr. Gladstone said in 1855,‡ with respect to this verse, speaking in the House of Commons :

I warn those who use that verse, believing that it gives sanction to these marriages, that in quoting that passage they will find themselves bound and nailed to sanction polygamy. It is not possible for any man to draw a conclusion in favour of marriage with a deceased wife's sister without being open to reply that it precisely, and to the same extent justifies, polygamy, with the exception of the case of marrying the wife's sister.

If, however, the translation in the text gives an accurate view of its signification and a real sister is meant, it prohibits marriage with a sister before the death of the wife, but it does not say that marriage with a sister after the wife's death is lawful. A prohibition of one thing is not necessarily a permission of another.

The Ninth Commandment forbids false witness 'against' a neighbour, but it does not sanction 'false witness' in favour of a neighbour, nor does it sanction 'false witness' against a stranger.

The Fourth Commandment forbids work on the Sabbath by a man, his son, daughter, man-servant, maid-servant, and

* *i.e.* 'woman to her sister.'

† No. xxii. See also Archdeacon of Middlesex, No. iii., p. 13, and others of the Tracts.

‡ See No. xiii., p. 19.

the stranger within the gate. Here is a list of persons to whom work is forbidden. Yet will anyone say that it would be lawful for the man's wife or his sister, his wife's sister or his nephew, or any other relative to work?

So the Command against murder does not sanction manslaughter or wounding, or the law against theft permit fraudulent bankruptcy or misappropriation.

If there is one thing clear about this difficult passage, it is that its meaning is not, what the 'Summary'* states, '*a clear permission to marry her sister after the wife's death.*'

THE PRACTICE OF THE JEWS.

It is often stated that the Jews allowed these unions, and that they interpreted Leviticus xviii. 18 as inferentially legalising them. The 'Summary,' however, admits that the Karaites took the opposite view.

Lord Hatherley† states that the Mishna in some passages forbids them, though it also has statements the other way :

I. What says the *Mishna*, which has been quoted by Dr. McCaul himself?

It has a whole section (lib. xiii. Yebamoth) on the obligation which the civil law of the Jews imposed upon a man to marry his deceased brother's wife and raise up seed to his brother, in certain cases.

Dr. McCaul ought to have known, or, if he knew, ought to have said, first, that in chapter i. and also in chapter iii., sections 7 and 9, it is declared, *if that brother's wife is his own wife's sister, he may not marry her*; and, secondly, that the examples there given prove that this prohibition was considered to hold good *after* his own wife's death. And the reason assigned is, that *the man and his wife's sister* are related *within the degrees forbidden by the holy law* to intermarry.

Lord Hatherley also says that Maimonides held them to be forbidden.

* 'Summary,' p. 5.

† No. xxx. appendix. See also page 94 of the Minutes of Evidence taken before the Commissioners in 1848, and Mr. Mayow's letter to Lord Hatherley, pp. 18-21.

If, however, it is said the Jewish Church is in favour, we reply, the Christian Church is against,—and we are Christians and not Jews.

Also the Jews were by no means trustworthy in their interpretation of their own scriptures. We need not plunge into an investigation of the wild teachings of the Rabbis, the New Testament affords us sufficient examples :

- (a) With regard to the duty to father and mother. The Jews made the commandment of none effect by their tradition.
- (b) As to divorce. It is well known that some of the Jews held that a husband might repudiate his wife if she put too much salt in her husband's soup. And our Lord taught that the law of Moses as to divorce was not sufficiently stringent for Christians. He does not lay it down as any new law, but as a principle contained in the Old Testament,* which had been weakened for the hardness of men's hearts.
- (c) As to Oaths.†
- (d) With regard to the Messiah. 'He came unto His own, and His own received Him not.' They misinterpreted the scriptures concerning Him.

We are bound, as Christians, to understand and interpret the Old Testament by the New, and to read the letter of the Law by the spirit of the Gospel.‡

II.—CONDEMNATION BY THE EARLY CHURCH AND THE CHURCH GENERALLY.

The first mention that we have of any union, or pro-

* Genesis was part of the law.

† See S. Matt. xxii.

‡ The Jews held that women were not included in such passages as Deut. xi. 19 : 'And ye shall teach them your SONS.' In the Jews' morning prayer the men bless God, 'Who hath not made me a GENTILE . . . a SLAVE . . . a WOMAN.' See Taylor's 'Sayings of the Jewish Fathers' (Cambridge), p. 29, Notes.

posed union, of a Christian with his deceased wife's sister, in Church history, is the condemnation of the same by the Synod of Elvira in A.D. 305. From that time downwards they were constantly condemned by the Church. Never, as far as is known, was any such union allowed until at last, in the 15th century, a Pope granted a dispensation for one—a precedent which was soon improved upon, by the grant of a dispensation to Ferdinand of Sicily to marry his own aunt.*

It will be seen that there is no proof, evidence, or presumption, that any union with a deceased wife's sister was allowed until more than 1,400 years after Christ, and that there is actual proof that it was forbidden for more than 1,000 years before this dispensation was granted. This affords a very strong presumption that it was never permitted by the Church, and the presumption is strengthened by the fact that the Councils in condemning such unions do not seem to be making any new law, they simply assign certain punishments.

So St. Basil† speaks of the custom of the Church forbidding it: 'A custom,' he says, 'having the force of law, inasmuch as our rules have been transmitted down to us by holy men.' He says such a union is not accounted marriage. This shows that the prohibition was no new thing. And it is no matter for surprise that we find no definite prohibition of these unions before A.D. 305, as we have no Christian Marriage Code earlier than that date. Before that period there is no Canon extant forbidding marriage with a man's own sister or daughter. We have but scanty records of any previous Councils, and those Councils were busy with questions arising out of persecutions and schisms, and we have no reason to suppose that marriage

* See No. iii., p. 4; No. xxviii., p. 4; No. x., p. 6.

† See his letter set out fully in No. xi. p. 3

with a deceased wife's sister was ever heard of or thought of, as being lawful for Christians.

The 'Summary' is mistaken in saying that the 'Apostolic Canons' couple marriages with a wife's sister with 'those with *a widow, an actress, a slave, and second marriages*; marriages *not* "discreditable" in a religious sense.' These Canons couple them with union with *a man's own niece*,* and group the other classes of marriages which disqualified a man from being a clergyman in a separate Canon.

The 'Summary' also much undervalues the importance of the Councils of Elvira (or Eliberis) and others.

These marriages were forbidden† by the Synod of Elvira in Spain which was held A.D. 305 or 306. Nineteen bishops are specifically mentioned in the synodical acts as present at the Council. According to another account of its Acts the number must have reached forty-three. The bishops included the famous Hosius of Cordova and bishops 'from the most different parts of Spain, so that we may consider this assembly as a synod representing the whole of Spain.' The Acts also mention the presence of priests, deacons, and laity.‡

Hefele, in his account of this important Council, alludes to the letter of St. Basil, and states that it proves that such marriages had always been forbidden at Cæsarea. §

They were also forbidden by the Synod of Neo-Cæsarea in Cappadocia, || which was held a few years later than that of Elvira. Many of the canons of both these Councils were

* Canon 19 (18); Hefele, 465.

† Canon, 61. Hefele, 'History of Christian Councils,' p. 164.

‡ Hefele, pp. 131, 132.

§ Hefele, 164. For Canon Law *see* also c. 1 and 8. X., de Consang. et Affin. (iv. 14); Decret. Greg. ix. Corp. Jur. Ed. 1730, Vol. ii. p. 571.

|| Canon, 2. Hefele, 224. Compare Canon 25 of Ancyra, (*See* Hefele, 222), which deals with a case of marriage with a woman after seduction of her sister.

received into the *Corpus Juris Canonici*, a fact which testifies to the importance of the Councils.*

The Roman Synod under Innocent I., A.D. 402, passed the following canon :†

No Christian may marry his deceased wife's sister, nor besides his wife have a concubine.

We have already mentioned that the 'Apostolic' canons say that 'he who hath married two sisters or his niece cannot become a clergyman.' These canons are, of course, not really the work of the Apostles, though they are ancient and important.

Unions with a deceased wife's sister are called 'incestuous' by the Council of Agde (A.D. 506); they are also forbidden by the First Council of Orleans (A.D. 511), the Council of Epaone (A.D. 517), the Council of Auvergne (A.D. 533), the Third Council of Orleans (A.D. 538), the Fourth Council of Orleans (A.D. 541), the Third Council of Paris (A.D. 557), the Second Council of Tours (A.D. 567), the *Capitulary* of Martin of Bracara (A.D. 573), the Council of Auxerre (A.D. 578), and other Councils.‡ It would be easy to add the names of other Councils, and, by an inquiry as to the names of the bishops and others present at these assemblies, to make a long list of persons who have expressly declared such marriages prohibited. But it is quite needless,

* In the year 355 Constantius forbid marriages with a deceased wife's sister, and declared the children born of them to be illegitimate. This was confirmed by several subsequent Emperors. (Smith and Cheetham, p. 1727.) The 1st Canon of the General Council of Chalcedon (A.D. 451) re-affirms the canons made 'in every Synod.' Canon Bright, in his Notes (p. 123), points out that this includes those of Neo-Cæsarea. The 'Summary' (p. 8) is mistaken in its view of this canon of Chalcedon.

† Canon, 9. Hefele, vol. ii. 429.

‡ See Dictionary of Christian Antiquities by Smith and Cheetham Tit. Prohibited Degrees. These writers refer to Labbe's *Concil*, tom. iv. pp. 1393, 1407, 1580, 1805, 1718, tom. v., pp. 297, 326, 816, 872, 914, 957.

for they were forbidden by a far higher authority than that of individual bishops, viz., by the law of the Church Universal.

They are forbidden by the Greek and Russian Churches.*

It is believed that they are also forbidden by the Nestorians, Copts, Syrians, and Armenians.† They are forbidden by the Presbyterian Churches of Scotland.‡

The Moderator of the Church of the Waldenses stated that they were forbidden in that Protestant Church. They were forbidden in the Church of Geneva by a decree drawn up by Calvin in 1567. The Lutheran Divines of Germany, consulted by Henry VIII., held that they were forbidden; the Synod of Dort in 1618-1619 took the same view. So did the Reformed Church of France.§ The Bishop of Winchester says :

Luther and Melancthon, and other Lutherans, opposed and rejected these marriages, so did Calvin and Beza, and all the Calvinist Reformers. It was not at the time of the Reformation, it was in the seventeenth century, in the most corrupt age of German morality, that these marriages were first permitted in Germany, and then in other Protestant countries. ||

III.—THE LAW AND CANONS OF THE CHURCH OF ENGLAND.

The 'Summary' states the objection as grounded on the 'Canons of the Church of England,' and places it entirely on the canons of 1603. The 99th Canon no doubt forbids it in the strongest terms. The canon declares all such marriages 'incestuous and unlawful (*illegitima*),' and orders

* No. xi., p. 1.

† No. xi., p. 8.

‡ Nos. viii. iv. See also xix., p. 14.

§ See speech by late Duke of Marlborough, No. xii., pp. 3, 4.

|| Bishop of Winchester, No. xxxv., p. 21.

the Table of Prohibited Degrees, which forbids such marriage as contrary to Scripture, to be set up in every Church.*

But the law of the Church of England on this subject is far older † than the canons of 1603. When the Church of Christ came into England and became the Church *in* England, she brought this prohibition with her, and forbid such marriages to those who were her members. And this the Church has steadily maintained as the law from that time. ‡

This, which was originally a law of the Church, became afterwards a law of the State, but nevertheless it did not cease to be a law of the Church, although it is recognised by the Queen's Courts and affirmed by Act of Parliament.

The duty of a child to maintain a parent who is in need is a law of scripture, but it does not cease to be a scriptural duty because it may now be enforced by law in certain cases.

If the child were relieved from all legal obligation to-morrow, the moral duty of supporting the parent would remain. And so, if an Act of Parliament were passed to-morrow to enable marriage with a deceased wife's sister there would still be the law of the Church forbidding it.

As far as the laity are concerned, the law of the Church forbidding such marriages does not depend at all on the canons of 1603; but those canons simply express and declare what was the law before they were made. The prohibition has a far higher, and older, sanction than any that the canons of 1603 could give. It is part of the law of the Church, preserved for the Church by statute, at the Reformation, and is binding on the laity, not because it is

* See also Canons of 1571. As to the Table, see Nos. vi. vii. The Canon states that the Table was set forth 'by authority' in 1563.

† For some early canons of the Church of England, see No. vii., pp. 2, 4.

‡ Perhaps there was supposed to be a power lodged in the Pope to dispense with this law. *Sed quære.*

in the canons of 1603, but because it is part of the old Church law which has never been abrogated.

With regard to the clergy, the prohibition is binding, both for the same reason that it is binding on the laity, and also for the additional reason that it is contained in their own canons. But the author of the 'Summary' urges that the Church of England 'may err.' He says that*—

Our Articles declare that particular Churches (as Rome and Jerusalem) have erred. She claims no infallibility for herself. If anything requires to be amended, it were doubtless better that she should herself in Convocation, assist in amending it ; but if that is impracticable, there is reason to be glad and thankful that an authority exists elsewhere to correct what is amiss.

It is, unhappily, too true that the Church of England *may err*, but it is equally true that if she allows her corporate life to be guided, and her standard of morals to be manipulated, by a mixed assemblage of Churchmen, Nonconformists, Roman Catholics, and unbelievers, she *must* err. No religious body with a definite faith has any right to surrender its own conscience and views of what is God's law and true morality, to gratify an extraneous body of persons. The voice of the Convocations, both Bishops and Clergy, has been clearly expressed against any such change.† In one sense it is quite true that Parliament alone, without any action on the part of the Convocations, can alter the law of the Church. It can alter the civil laws affecting the Church ; it can deprive the laws of the Church of the civil sanctions and recognitions which they possess. It can inflict punishments on clergy and laity for refusal to acknowledge the State Ecclesiastical legislation. It can pass an Act to declare marriage with a deceased wife's sister shall be deemed 'Holy Matrimony,' and 'in accordance with God's

* Page 9.

† See Nos. ix., xxxiv., and the Reports of proceedings in Convocation, also the Reports of Diocesan Conferences.

law'; and it can, if it thinks fit, order certain verses in Leviticus and the Gospels to be expunged from all copies of the Bible—but when it has done all this the law of the Church remains just as it was before.

There are two ways by which the law of the Church may be altered :

(1) By active legislation of the Church herself.

(2) By acquiescence on the part of the Church and her members.

Of the first there is not the slightest chance, and the prospects of the second are doubtful. We have said that the Church of England has forbidden these marriages, (1) by her ancient canon law ; (2) by the canons of 1603. She has also forbidden them by her Ecclesiastical Courts, and has 'censured' persons who have contracted them and ordered them to separate. And on appeal to the Crown, the High Court of Delegates* confirmed the sentence.† So the Church and State have thoroughly concurred. But the Church has done far more than this. She has ordered the Table of Degrees‡ prohibiting these marriages to be placed in every Church. And, as a matter of fact, it is placed at the end of every Prayer Book. It is not in the 'Sealed Prayer Book,' but it is in the open Prayer Book which she places in the hands of all her members. The prohibition is part of the active and actual teaching of the Church.

Every clergyman, when he is admitted into Priest's Orders, promises § 'to minister the discipline of Christ as the Lord hath commanded, and as this Church and Realm hath received the same, according to the commandments of God,' and to teach his people to 'keep and observe the same.' Prohibition against certain marriages is part of this 'dis-

* The predecessors of the Judicial Committee of the Privy Council.

† See Appendix A.

‡ See Nos. vi., vii., and page 26 above.

§ Ordination Service.

cipline,' as the Church and Realm have understood it ; we cannot be surprised if some of the clergy think that Parliament can hardly give them a dispensation from this ordination vow. But of course the most strenuous objection will be made by those clergy who believe that the proposed union is not only forbidden by the Church but by Holy Scripture.

PROBABLE EFFECT OF THE PASSING OF THE BILL ON
THE CHURCH OF ENGLAND.

It will be worth while to consider more carefully what would be the effect on the Church of England if a Bill legalising these marriages became law. Much depends on the form of the Act. It might be in any of the following forms :

- (a) Declaration of validity of such marriages for all purposes.
- (b) Containing a clause to relieve the clergy from being obliged to marry the persons, but requiring them to lend the churches of which they are Incumbents for such marriages.
- (c) Containing a further clause relieving the clergy from the obligation of lending the churches of which they are Incumbents and of publishing the Banns.
- (d) Containing a clause preventing any such marriage in any Church of the Church of England.
- (e) Containing a clause to the effect that nothing in the Act shall alter the law of the Church of England, or render any clergyman liable to punishment for refusing the Holy Communion to the parties, &c.

The form (e) may not be likely to pass, if the Bill itself passes ; so we may therefore consider form (d), which represents practically the form in which the Bill was introduced into the House of Lords in 1883.

The marriages would not only be legal, but they would for all legal purposes be 'Holy Matrimony.' The married persons would be entitled to receive the Holy Communion. This has been declared by the Judicial Committee of the Privy Council to be the statutory right of parishioners under I Edward VI., chap. i., section 8, unless the persons are notorious sinners, &c., which no Court would hold persons to be merely because they had married according to law.* Yet it is quite certain that a considerable portion of the clergy would refuse to administer the Holy Communion to them, though it may be a large portion of equally conscientious men would take a different course.

In due time a clergyman, on so refusing, would be brought before the Courts which exercise jurisdiction over Ecclesiastical matters for refusing to administer the Sacrament to a parishioner, and it may be assumed that those Courts would order the clergyman to administer the Holy Communion, and difficulties of a very serious nature would immediately arise. With regard to this part of the subject, see especially the Report of a Committee of the Upper House of Convocation, presented by the Bishop of Gloucester and Bristol,† and the speeches by Archdeacon Hessey and others at the Church Congress at Reading in 1883, and speeches of the Duke of Marlborough and the Bishop of Lincoln in the House of Lords in the same year.‡

STATEMENTS OF THE 'SUMMARY' WITH RESPECT TO THE CHURCH OF ENGLAND.

The 'Summary' states that Lord Lyndhurst's Act made marriages with a deceased wife's sister contracted previous to the Act *valid*. This statement is contrary to the high authority of Sir H. Jenner Fust (Dean of Arches), as will

* Jenkins *v.* Cook. Law Reports, 1 P. Div. 80.

† No. xxxiv., p. 4.

‡ No. xxxv., pp. 9-11, 24.

be seen from the quotation below. That learned judge repudiated the idea.* So far from holding them to be *valid marriages* he considered he could punish them as *sin*. He was of opinion that the Act merely prevented the children being rendered illegitimate by a decree of the Spiritual Court declaring the marriage void. See also letter of the Bishop of Oxford to *Times* of February 10, 1884.

The 'Summary' is mistaken in saying that Queen Elizabeth's 'title depended on such a marriage being declared invalid.'† It is well known that her title depended on her father's Will and Acts of Parliament‡

The 'Summary' is mistaken in supposing that :

The Reformation swept away the prohibition of cousins and others, but retained this marriage with sisters-in-law, *because* it was necessary to Henry's passions and the State purposes of Cranmer and Parker.§

Poor Reformation ! it has been much abused, but seldom has it received a worse or more unjust attack than this. Observe the iniquity with which Archbishop Parker is charged. He orders a table, declaring certain marriages to be contrary to Scripture, to be set forth, and he is said to do this for State purposes. But of course the charge is unfounded || The Kirk of Scotland had no Henry VIII. or Elizabeth, or Cranmer or Parker, or Table in the Church, yet it forbids these marriages.

VIEWS OF THE 'SUMMARY' AS TO THE CLERGY.

The 'Summary' says :

It is not probable that any great difficulty will arise, practically, should Parliament think right to repeal the prohibition.

* See No. xix., pp. 10, 15.

† 'Summary,' p. 11.

‡ See 28 Hen. VIII., c. 7 ; 35 Hen. VIII., c. 1. Hallam, Const. Hist., Vol. i., p. 166.

§ 'Summary,' p. 12.

|| See Letter of Cranmer to Thomas Cromwell, cited in No. vii., p. 6.

Doubtless the great body of Clergy will obey a legally constituted authority, as they ever have done, according to good conscience and clear duty.

To refuse Communion and Christian burial *does not lie with the Clergy*. They have no authority in the Church of Christ so to do. The ground of refusal must, in each case, be submitted to the *Bishop*; and its propriety be determined by him.—(See Rubric to Communion Service).

The Clergy have *never sworn to obey the Canons*; they HAVE sworn to obey their *Bishop*. The vow of obedience made to the Bishop cannot be superseded by a vow unadvisedly imposed on themselves.—(*Examination of Keble*, p. 25).

This inconsiderate step of a small knot of clergymen is greatly to be deplored. It has the appearance of petulance, rather than of piety. Many such marriages had been made before the Act of William IV., and were by that Act declared valid. If marriages made after the passing of the Bill now in Parliament would be incestuous and impure, those confirmed by the Act of William IV. are no less so; yet no clergyman refuses the parties Communion or Christian burial; and to make such a difference would be an outrage on consistency of character; and the refusal a violation of Christian charity.

Whether the clergy will, as a body, obey in this, is a matter of opinion, but there are some statements in the above extract which are likely to mislead. The refusal of Communion* *does* lie with the clergy in the first instance, though notification must be made to the Bishop.† The person rejected has an appeal to the Courts, and then the struggle would begin. The clergy have taken vows in ordination.‡ They have *not* promised to obey their Bishop; they have only promised *canonical* obedience, *i.e.*, obedience according to the canons, and the canons distinctly forbid these marriages. According to the arguments of the 'Summary,' if a Bishop ordered a clergyman to solemnise a

* I have not thought it necessary to enter upon the question of burial.

† In *Jenkins v. Cook* (L. R. 1. P. Div. 80) the Lord Chancellor states (p. 106) that the object of the notification is not to give the parishioner an appeal to the Bishop, but that it is apparently to enable the Bishop to 'proceed against the person repelled, to punish him *pro salute animæ*.'

‡ See p. 28 above.

marriage between a man and that man's own sister, he would be bound to obey.

However, in this case, the great body of the clergy and Bishops are united. There are indeed only two Bishops of the Church of England in favour of the Bill,* and the diocesan conferences have spoken with no uncertain voice.

We must again repeat that Sir H. J. Fust declared that the Act of William IV. did not make these marriages valid.† He says :

Again, if we look to the preamble of the Act, it is not for the protection of the parties who have been guilty of the offence, for such it is by the Ecclesiastical law and by the law of God, but for the protection of the children, for that is the purpose and object of the Act, to settle the estate and condition of the innocent issue of such marriages, not to screen the delinquent parties. But whatever may have been the intention of the legislature, and whatever may be the effect of this Act of Parliament, the marriage had between two parties, Thomas Moulden Sherwood and Emma Sarah Ray, is an incestuous marriage and must ever so remain. The law of God cannot be altered by man. The legislature may exempt parties from punishment ; it may legalise, humanly speaking, every prohibited act and give effect to any contract, however inconsistent with the divine law, but it cannot change the character of the act itself, which remains as it was, and must always so remain, whatever be the effect of the Act of Parliament.‡

* See No. ix. and the votes in the House of Lords, and speeches in Convocation.

† See p. 31 above.

‡ *Ray v. Sherwood* This Judgment is more fully set out in No. xix., p. 15. In No. xix. I have shown what was the condition of the law before Lord Lyndhurst's Act was passed. 'Marriage' with a deceased wife's sister was legally on just the same footing as a 'marriage' with a man's own sister. It is misleading to say marriage with a wife's sister, or an own sister, was merely 'voidable.' It was not marriage at all ; nevertheless, owing to the peculiar condition of the law, and the interference of the Civil Courts with the Ecclesiastical ones, if a man went through the form of marriage with his sister by blood or marriage, and the 'marriage' was not declared void in the lifetime of the parties, the children could not afterwards be declared illegitimate. But if the 'marriage' was declared void, it was declared void

IV.—SOCIAL INEXPEDIENCY.

The effect of passing the Bill would be to greatly alter the position of a wife's sisters both before and after the wife's death. It would affect the comfort of families, and would press hardly, especially in cases where the wife's sister is a member of her brother-in-law's household during the wife's life, or takes care of the children after their mother's death.

The men who wish to marry their sisters-in-law, and the women who wish to marry their brothers-in-law, are extremely few, comparatively, and the many will suffer for the very doubtful benefit of the few.

The argument which is often most strongly urged in favour of the Bill is that the wife's sister is the best person to take care of her children after their mother's decease. Now this argument would tell more strongly in favour of permitting marriage with a mother-in-law, for a grandmother's affection is well known to be far greater than that of an aunt. Moreover, her experience with children would be very useful.

But really the effect of the passing of this Bill would often be to *prevent* the sister from taking care of the children, as, practically, public opinion would forbid her living alone with her brother-in-law and his children, after the wife's death, if she could marry him. The result would therefore be, as Lord Shaftesbury has pointed out, the sister-in-law must, after the wife's death, immediately quit the house, or immediately marry her widowed brother-in-law !*

from the very beginning, and the parties ordered to separate. Hence the *status* of children born of persons who were within the prohibited degrees, and had gone through the form of marriage, was undetermined until the death of one of their parents.

* See also No. xxxvi., p. 6 (American).

On this question of social expediency it would be easy to give any number of quotations from statesmen and lawyers, Liberal and Conservative, but space will only allow us to quote one. Lord Coleridge says :

This Bill is founded on no principle ; it sets man free, but it leaves woman bound. It lets the husband marry his wife's sister, because it is said she is not his sister ; but it forbids the wife to marry her husband's brother, because he is her brother. Where is the justice—where is the common fairness of this ? Suppose it were step-children, where there is no blood in common, would anyone bear for an instant with a proposition that a man might marry his wife's daughter, but that a woman might not marry her husband's son ? My Lords, I deny that the general sentiment supports the Bill. I deny also that it is for the general good. It is not easy to overstate the benefits which the whole of society derives from the social relations at present possible between the husband and the wife, and the family of the other. . . . My Lords, I admit that, as a rule, you should be tender to minorities. I admit that, if possible, you should indulge men's affections. But this is a case in which you cannot indulge the wishes of the minority without doing a great injustice, and inflicting a terrible hardship on the majority. Let me explain. Most men do not lose their wives, and for them this Bill has no significance. To some men there comes a time when a great shadow falls upon them, when the light of their life goes out, and hope dies within them. Some of them recover, form fresh ties, begin their lives again, and marry another woman. The majority of such men do not wish to marry their sisters-in-law, and for them, too, this Bill is of no use, but may be most mischievous. There remains those who do not recover, and who do not desire to form new ties of marriage. To these men, and to those who do re-marry, till they re-marry, the society of a sister-in-law is a blessing perfectly unspeakable. Who can count the sum of innocent delight and comfort which this relation has given to men who most need such comfort, and at a time when they need it most ? Why, for the sake of the few who do want to marry their wives' sisters, are sisters-in-law to be abolished for the vast majority of those men who do not so wish ? Because you do abolish them. I said many years ago, and I venture to repeat it here because it is true, that by passing this measure you point out by statute the sister-in-law as the proper Parliamentary successor of the wife ; and what modest woman will put herself in the way of a succession when most people will say that she is manifestly seeking it ? Why is this

hardship to be done to the great majority who are contented with the law for the sake of a very few who want to break it? *

The 'Summary' is mistaken in supposing that these marriages would be likely to secure 'peace' to a family. It must not be supposed that, because an Act of Parliament was passed legalising such unions, all Christians would think them either decent or true marriages, and the family disputes would be of a most bitter description.

Almost all writers and speakers against the Bill have laid great stress on the 'social inexpediency' of the proposed change. See, for example, Lords Cairns,† Beauchamp and Salisbury, Duke of Marlborough,‡ Mr. Ward Hunt in No. xii., Duke of Argyll, Lord Selborne, Lord O'Hagan, Mr. Roebuck in No. xiii., Miss Lydia Becker in No. xiv. the Lord Chancellor in No. xxxv., p. 32, and the Presbyterians in No. viii.

V.—THE IMPOSSIBILITY OF PREVENTING THE LEGALISATION OF OTHER UNIONS.

(1) *Divorced* wife's sister. The so-called Deceased Wife's Sister's Bill has been before Parliament in different forms. And some of these permitted union with a divorced wife's sister, so that a man could seduce his sister-in-law, then after his wife had obtained a divorce, marry the sister-in-law, whom he had seduced, before his wife's eyes! And yet such a dreadful Bill has been supported by respectable people; perhaps they did not understand what the effect of the Bill would have been.§

(2) Deceased wife's niece. As the niece is not so near of kin as the sister, this union must obviously be legalised. Indeed the promoters of the Bill have intimated that they are ready to accede to an amendment in this direction.

* No xiii., p. 11.

† See also No. xxvii., p. 10.

‡ See also No. xxxv., p. 1.

§ It would have followed from the Divorce Act, see No. xix.

(3.) Deceased brother's wife. This relationship is identical with that of wife's sister. Miss Lydia Becker says* that the Bill (which she opposes) creates 'a new inequality between the sexes, and a new degradation for women.'

On such a subject, and in the Nineteenth Century, such inequality between men and women could not be maintained. Most of the arguments will do equally well for the union with a brother's wife. The Levirate would be cited as an express authority in its favour. The Church of Rome can allow it by dispensation. The Church of England may be wrong and Parliament right; and finally, who can better protect and support the children than their father's brother? There is no blood relationship.

(4.) The experience of foreign countries has shown that not only legalisation of marriage with a brother's wife, but even of marriage with a man's own niece has followed, or coincided with, legalisation of marriage with a deceased wife's sister. Marriage with a niece is not *expressly* forbidden in Leviticus; and as to the argument that such unions would probably result in unhealthy progeny, the reply would be that under healthy conditions the risk would not be greater than that of marriage of two unhealthy persons who are not nearly related. Dispensations have been granted for marriage of uncle and niece by the Church of Rome.†

This experience with regard to the effect of any relaxation of the law of marriage is not derived from any country, or any one form of religion.‡

Mr. Beresford Hope says:§

Alike in Protestant and in Roman Catholic countries :

* See No. xiv. an excellent letter by Miss Becker.

† See page 22 above.

‡ Many of the speakers mentioned at page 36 above have also pointed out that if the Bill is passed further alterations in marriage law will inevitably follow. See also Lord Coleridge, page 35 above.

§ No. v., p. 7.

First, Wherever, either by general law, as virtually in France* and formally in Protestant countries, or by way of an exception, as in other Roman Catholic lands, a man can marry his wife's sister, there always he can equally marry his brother's widow, and his wife's niece.

Secondly, Wherever, either by general law, or by way of an exception, a man can marry his sister-in-law or his niece-in-law, there also under the same conditions a man can marry his blood-niece, daughter of his brother or of his sister; and he can also marry his blood aunt, sister of his father or sister of his mother. This is now the law of France and of Germany, and of nearly all the Continent.

There is no possible halting or looking back. Our present marriage law is consistent, and based on scripture. The permission to marry a wife's sister being granted, coupled with the table of prohibited degrees being kept otherwise as it is, would be revolting to all men of logical minds from its inconsistency, its selfishness, and its contradiction to all natural justice, and nothing could prevent its being replaced by another law as consistent as the present one while differing from it in rejecting instead of respecting scripture—the present law, we mean, of Continental marriage.

The change proposed will take away our present marriage law and give us a law devoid of all principle and all consistency, and, therefore, devoid of all stability.

There are two possibilities for the marriage law of the future, if the present law of England is rejected. The one is to take the express prohibitions of the Old Testament only, without employing the aid either of the Church, or of Reason, or of the New Testament, in construing the Old Testament. The result would be to allow marriage with a man's own niece.†

The other is to permit unions with sister-in-law, mother-in-law, and daughter-in-law, and to attempt to prohibit marriage with very near relations by consanguinity merely on sanitary grounds.

* I believe it is forbidden in France, but apparently dispensations have been comparatively common. See Smith and Cheetham, p. 1729, note.

† See p. 36 above.

Bad as the Bill is, if it passes, it must certainly lead to worse.

APPENDIX A.

The following cases of marriage within the prohibited degrees being declared void, will be found in Rothery's Return of Cases before the High Court of Delegates :

A.D. 1684.	. . .	No. 81.	Deceased wife's sister.
1692.	. . .	No. 98.	Father's widow.
1728.	. . .	No. 138.	} Deceased wife's sister.
		No. 139.	

In each case the marriage was declared void from its commencement, and the parties were ordered to separate.

We find proceedings to compel churchwardens to provide the Table of Degrees in 'Hales Precedents,' in 'Causes of Office against Churchwardens,' &c., pp, 6, 34, 57, 111, in the years 1607, 1613, 1628, 1614.

Marriage with a deceased wife's sister is also held illegal by the Civil Courts, as will be seen from the following leading cases :

Hill v. Good (King's Bench. Vaughan, 302; see also *Gibs.* 412; 3 Keb. 166).

Brook v. Brook (House of Lords. 9 H. L., C. 193; 7 Jur. N.S. 422; 4 L. T. Reports, N.S. 93; 9 W. R. 461).

Reg. v. St. Giles'-in-the-Fields: Reg. v. Chadwick (11 Q.B. 173; 12 Jur. 174; 17 L. J., Q.B. 81).

Marriage Law Defence Union Tracts.

No. XL.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

LORD DALHOUSIE AS HENRY VIII.

[*Reprinted from "THE SATURDAY REVIEW" of March 29, 1884.*]

IN these days of literalness and of scandal we cannot make too much haste to assure Lord Dalhousie that the parallel above indicated between him and the largest and most married of English kings means nothing offensive. We do not insinuate that Lord Dalhousie has had six wives, or has got rid of two of them in a sanguinary manner, or has indulged in any of the other enormities attributed by Hume, Mrs. Markham, *Little Arthur's History of England*, and other authorities, to Mr. Froude's favourite. But as we all know on those same authorities, that Henry sent about to consult universities and great scholars when he wanted to unmarry his dead brother's wife, so has Lord Dalhousie for two years past been sending about to consult universities and great scholars now that he wants (Heaven only knows why) to procure leave for other people to marry their dead wives' sisters. Part of the results of this correspondence were published by the active and well-subsidised society

which exists for the purpose some two years ago, and Dr. Candlish, of Glasgow, disposed of them very satisfactorily then. They have now been republished, with a queer appendix of additional opinions, partly got from the Biblical Revisers of England and America, partly culled from the writings of Dr. Stanley, Dr. McCaul, and other persons in days long past. Sufficient unto the year is the bad literature thereof, at least of this kind; and we must not here pay much attention to the previously-published matter, though it is tempting. The ingenuity with which Professor Geddes, of Aberdeen (there are wide-awake people as well as cauld kail in Aberdeen), declines to commit himself on the subject, and the delightful certificate of a certain Dr. Naber, Professor of Greek Literature in the University of Amsterdam, which appears on the same page, contrast pleasantly. Professor Naber asserts that "there is nowhere any evidence in Scripture against your bringing forward the measure you propose to introduce to the Senate," and that "the various arguments adduced by your adversaries are totally inadequate to shake your position." That is something like a Greek Professor! But this field, though, as has been said, tempting, must be left to Dr. Candlish. The business of a periodical is to shoot flying, and not round the corners of the past.

The new matter which has resulted from Lord Dalhousie's (or some one else's) fresh appearance in the character of Henry VIII. (always with the limitations above made and provided), is, as we have said, extremely miscellaneous. The wise know what is meant by counsel's opinion, and would be surprised to find anything but a majority on the

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side of the consulting party. However, even among this number there seem to have been some whose answers the Marriage Law Reform Association would hardly have published if it had been wise. Dr. Ezra Abbot, of Cambridge, Mass., Dr. Angus of the Regent's Park (who displays his exact scholarly and logical faculties by answering the question of scriptural authority in the words "I have known many cases illustrating the cruelty of the present law"), Dr. Birrell of St. Andrew's and so forth, declare themselves unhesitatingly on the side of Bottles. But when we come to Mr. T. K. Cheyne, whose authority as a Hebrew scholar is certainly as high as that of Dr. Angus of the Regent's Park, Mr. Cheyne is found pronouncing roundly that "the circumstances of the writers of the Bible being different, he does not see how we can appeal to their authority on either side." All these epistles are headed by recent and intelligible dates. But after hearing Chancellor Crosby of New York (he makes a lovely parallogism which it would unluckily take too long to expose), we come upon a blast from the wild horn of Benjn. Davies, LL.D., who in 1865 signified his "heartly sympathy with the objects of your Association, as seeking to remove a hateful monkish blot from our law of marriage." Monkish blot is good, but as Lord Dalhousie was, according to the Peerages, only eighteen in 1865, it is clear that we have got among new strata. A man surely does not send circular letters to burgomasters and great oneyers in languages and theology requesting permission to marry his deceased wife's sister when he is eighteen! Indeed these later opinions are a sufficiently perplexing medley. Dr. Gotch does not think

the marriage should be prohibited by law; but, on the other hand, he does not think it in general desirable. When Professor Henry Green, of Princeton, N.J., says that "such marriages shock no one's sense of propriety," he says what may be true of Princeton, N.J., but what even the Marriage Law Reform Association will assert hardly to be true of England, so that he cannot be said to be good for much. Dr. Kennedy, of Cambridge, whose opinion seems to be regarded as of such value that it is given twice over on two different pages, chiefly refers us to the late Dr. Hook, but this scarcely seems conclusive. Dr. Stanley Leathes says that "there is nothing in the letter of Scripture which can be twisted into an explicit prohibition." Prof. Mead says that the arrangement works capitally in America, which, as we know on very good authority, it does not. Dean Merivale takes the ground (which is compatible with the strongest objection to such unions) that "the texts usually discussed have no reference to the present time." But perhaps the pluckiest thing here done is the publication of Cardinal Newman's opinion. That is, as is well known, that, if the interests of the lower classes are consulted, the law ought to be relaxed; if the interest of the educated classes are consulted, not so. For this odd and characteristic distinction the writer gives no reasons. But he is careful to say that this concerns the social question only, and, that, in his opinion, there is, "in favour of the law standing the danger of its repeal acting in the serious movement now making all over Christendom to relax the sanctity of marriage." Beyond this it is not necessary to go, though it may be observed that Canon Westcott, whom the Asso-

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ciation, or Lord Dalhousie, or somebody else seems to have consulted so recently as last month, "cannot but feel that the early Church rightly expressed the spirit of scriptural teaching by forbidding marriage with a deceased wife's sister." After this the ruck of Americans, who naturally defend the existing law of their country ; and of Dissenters, who sometimes avowedly and always pretty evidently object to the prohibition because it expresses the law of the Church they hate, do not seem to require much attention, though it may be freely confessed that they are in the majority. But what is noteworthy is that in almost all this argument the single text in Leviticus and not the general spirit of Biblical injunctions as to marriage, far less the great question to which Cardinal Newman briefly alludes, is handled. The far more important text as to the "one flesh" is practically left alone, or treated only in the spirit of idle flippancy with which a distinguished member of the House of Lords thought proper to treat it last year. No notice is taken of the well-known fact that, as far as literal prohibition is concerned, an argument for a marriage between father and daughter might be founded on Leviticus. It is on the supposed permission implied in the prohibition that the assailants of the law of marriage rely, and it is noteworthy that, in so relying, they do not so much as notice the argument (not flawless, no doubt, but which as rough common-sense argument will always have great weight with common-sense people) that a prohibition to marry two persons at the same time when polygamy is permitted, implies a prohibition to marry them successively when polygamy is not permitted.

However, this is a digression. We fear that the result of

this supplementary appearance of Lord Dalhousie, or of Mr. Paynter Allen, or of the canvassers of the Marriage Law Reform Association, or of whoever it is, in the guise of seekers for the opinions of wise men, will not have any considerable effect, except on persons who have a mind to their sisters-in-law as Henry VIII. had to Anne Boleyn. Probably it is not Lord Dalhousie at all who makes this heterogeneous collection of letters dating from last month, undated expressions like Dean Stanley's "ecclesiastical rubbish" (by the way, did he think that deaneries came under that denomination?), the opinions of the great Dr. McCaul, delivered before Lord Dalhousie was born, and the twenty-year-old indignation of Benjn. Davies, LL.D., with monkish blots. Just at the present moment Lord Dalhousie seems to have modestly withdrawn from this particular scene. The deceased wife's sister craving for brothers-in-law does not address him in the famous lines :—

Dalhousie of an old descent,
My stoup, my pride, my ornament.

It is Mr. Broadhurst who is at this moment the stoup and ornament of the deceased wife's sister, Mr. Broadhurst who has Sir Pandarus of Troy become between her and her sighing brother-in-law (what will brothers-in-law have to be called when they are not brothers-in-law?). Mr. Broadhurst is going to move a motion or a resolution or something of the same kind which was so successful on another notorious occasion. The way has been smoothed by harrowing stories of deceased wives' sisters who have been married in the colonies and deserted in England. These stories a wise association would perhaps have kept in reserve, for they do

not testify either to the stable attractions of deceased wives' sisters, or to the high-minded morality of the brother-in-law whom we are asked to relieve of disability for this particular indulgence. What may come of this none can say. Meanwhile the assailants of the law of marriage may obtain counsel's opinions from every so-called college of every minute sect in Christendom, and they may garnish them with the venerable extracts which have been kept standing forty years by the Association's printers. They may pass resolutions and lobby for majorities to their hearts' content. But there are some things that all their money and all their energies will not enable them to do. They will not overthrow the great consensus of the Christian Church on this point from the earliest time. They will not dis sever the particular case they are busied on from the general case of marriages of affinity. They will not show that a relaxation of the marriage law can be anything but a curse to the world.

TRACT XXV.—*The Real Bearing of the Opinions of the Professors of Hebrew and Greek on the Scriptural Law of Prohibited Degrees in Marriage. Price 1d.*

Marriage Law Defence Union Tracts.

No. XLVI.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

What Working Men say on the Question of Marriage with a Wife's Sister.

*Speeches delivered at the Anniversary Meeting of the Church
of England Working Men's Society, in the Cannon Street
Hotel, August, 1884.*

A large number of London and Provincial Delegates
representing the following places, were present :—

Beckenham	Streatham	Leeds
Friern Barnet	Uxbridge	Leicester
Canning Town	Wimbledon	Lowestoft
Clapton Park	Bath	Manchester (Hulme)
Charterhouse	Brading, I.W.	Masborough
Clerkenwell	Beccles	Morpeth
Camden Town	Bournemouth	Newport
Enfield	Brighton	Northampton
Edmonton	Brymbo	Oxford
Hackney Wick	Baptist Mills (Bristol)	Portsmouth
Hammersmith	Bury S. Edmunds	Reading
Haggerston	Cavendish	Ryde, I.W.
Harrow Green	Cardiff (Roath)	Roads
Holborn	Cardiff (S. Mary)	Shipton-under-Wych-
Kentish Town	Chard	wood
Kennington	Clay Cross	Shrewsbury
Kilburn	Dover	Staveley
Kingsland	Ely	Swindon
London Docks	Exeter	Shoulden
Marylebone	Farncombe	Stafford
Paddington	Haverfordwest	Tunbridge Wells
Plaistow	Hughenden	Walsall
Plaistow, Kent	Ipswich	Winchester

Mr. C. POWELL, the Secretary, referring to the tactics pursued by Mr. Broadhurst, M.P., in introducing the Deceased Wife's Sister Bill, remarked that from the great flourish of trumpets with which that Bill was heralded in the House of Commons, it might have been supposed that there was a burning desire in the breast of working men to marry their deceased wives' sisters. Mr. Broadhurst came to the House of Commons fortified with any number of petitions, and, amongst others, the hon. member produced a number of names purporting to be Trades' Union delegates, representing 500,000 working men. He (Mr. Powell) made bold to say that was a very mean and shabby act, because Mr. Broadhurst had no warrant whatever for stating that those delegates represented 500,000 working men on this particular question. Working men who were acquainted with the usage of Trade Societies knew very well that the men who sent those delegates to the Trades Union Congress never gave instructions beyond those matters which appeared on the programme or the agenda, and it was the business of those delegates to represent their constituents on those matters and on nothing else. Therefore Mr. Broadhurst could not claim that he spoke on behalf of the working men on this question. He (Mr. Powell) therefore charged Mr. Broadhurst with having obtained those signatures by false pretences, and of libelling the working men by suggesting that they desired incest to be legalized in this country. As far as this Society was concerned, whose members were all *bonâ fide* working men, they would do everything that lay in their power to prevent this obnoxious Bill being passed into law, and to expose the hollowness of the arguments brought to bear on this question by those who had charge of the Bill.

Mr. WALLIS (Plaistow) then moved the following resolution :—

‘That in the opinion of this Meeting of representatives of London and Provincial Working Men, no relaxation of the restrictions in the existing Law of Marriage is desirable ; and the Meeting further strongly protests against the assertion that the legalisation of Marriage with a Deceased Wife’s Sister is desired by the working classes, in whose supposed interests it has been introduced into Parliament ; further, it declares that it will continue to use its best endeavours to prevent the measure becoming law should it be again introduced.’

He said they had just heard from the General Secretary that Mr. Broadhurst, who was supposed to be the champion of the working classes, had undertaken to father this most incestuous Bill through the House of Commons in the interests of the working men. Now he (Mr. Wallis) had watched with great interest the growth of this movement, and, so far as he could ascertain, there had been no mass meetings of the working classes to support this measure. This was to him a very strange thing, seeing that it was sought to be made out that there was a ‘burning desire’ on the part of working men for this legislation. ‘Therefore he thought, nay, he was sure, there was no such ‘burning desire’ on the part of the working classes to enter into these marriages. It had been said, on very good authority, that our marriage laws as they are were a great defence around the domestic hearth of Englishmen, and if they destroyed that power, which was regarded as of divine institution, they, as it were, took away the strength, life, and stability of an entire empire. They were quite aware that this question was brought before them under a very sentimental aspect. The children were made, as a rule, the objects of their sympathy. It was argued that the deceased wife’s sister would be the proper guardian of her sister’s children. Whether that was so or not, he thought there was room for very great difference of opinion, and he never could see that it followed by necessity that because a woman happened to be a deceased wife’s sister that would qualify

her as a stepmother. It seemed to him to make a very great inroad into the domestic happiness of the home. It had been justly said that an Englishman's house was his castle, and if this inroad was made, he did not see how it was possible to retain that independence which every Englishman had a right to enjoy in his home after marriage had been legalized with a deceased wife's sister. In approaching this question to-night, it was for them, as Churchmen, to stand up boldly in defence of our marriage laws. It had been alleged for some time past that in the United States, and in many other parts of the world, including the Colonies, this legalization of marriage with a deceased wife's sister was regarded as a boon. Well, even from this point of view, he would ask those who lived in America whether they approved of those marriages. They may answer, perhaps, that the system, to a certain extent, worked very well. In this country, at all events, the measure would be an innovation, and they could not stop there. Other measures must follow, which would make a greater inroad into our domestic relations than even that. For instance, would it be fair to stop at marriage with a deceased wife's sister, and not allow marriage with a deceased husband's brother? Why should one not be just as legal as another? Now it was a very strange thing that they should be told that in America and other countries a large number of the prohibited degrees were not recognised. A man may marry his wife's niece or wife's daughter in New York, and there the law even allows a man to marry his own niece by blood. Now these were innovations which were the logical result of marriage with a deceased wife's sister. It had been said that this was a working man's question. Now, he believed, it was more of a working woman's question. He believed that it was the women who

were most interested in the defence of our present marriage law. He believed that all the security of the woman was taken away when once you removed this law of affinity. She was no longer safe, and it became very easy to break the marriage contract. It had been very justly said that whenever these inroads upon the marriage law had been made, divorce became almost as frequent as marriage itself. It should be the duty of the Church of England Working Men's Society to try, as far as possible, to cultivate, as well as encourage social purity, then, the more they encouraged that, the less would be the danger of those people cropping up now and then and saying there was a burning desire in the breasts of working men to see this incestuous Bill passed into law, which he was sure was not the case among the majority of working men who had really considered this question. It would be want of talking to the masses, and of explaining the law of affinity and relationship in all its bearings, that would, he was sure, in any future time, permit this Bill to become law. In conclusion, he quoted a remark of Canon Knox Little, who had stated that, although he was a Radical, he yet thanked God there was a House of Lords, which could protect the country against such an innovation as this proposed change in the marriage law. For that reason he (the speaker) sincerely trusted that they would not see the House of Lords abolished, but would be long able to say, 'Thank God we have a House of Lords.'

Mr. KIRK (Leeds) seconded the resolution with pleasure. The contention that the working classes were demanding this measure was simply humbug. It had not the slightest foundation in fact, the truth of the matter was that if there were no lords that had married their wives' sisters, or blood-thirsty Quakers who had gone out of the country to marry their deceased wives' sisters, there would have been very

little agitation for the passing of that measure. 'Vanity of vanities,' said the wise man, 'all is vanity'; and when he read expressions to the effect that the working men were demanding this measure, he said 'humbug of humbug, all is humbug.' Well then, they were a body of working men met together spontaneously, he might say, for the purpose of opposing this measure; and he would ask their opponents to show them when the working classes in any town had met together for the purpose of promoting the measure. He found that in Bournemouth there had been four meetings held of working men, who had passed resolutions protesting against the measure. In the North they were, in a measure, somewhat at the dictation of the wire-pullers, who had been at work on this as they had been in many other measures. The Leeds Town Council, who were supposed to meet together to consider the sanitary condition of the town, and to put in force various measures for the good of the town, actually went out of their way to pass a resolution in favour of marriage with a deceased wife's sister. He did not think the Council did it spontaneously, not at all; the wire-pullers had been at work. The Leeds School Board, who he supposed were elected as they were in London, for looking after the education of children, had also gone out of their way to pass a resolution in favour of this measure. He did not know whether it was one of the subjects put down in the Mundella Code for the instruction of the children. If it was, then he could tell them that the laity and the Church working men would be inclined to set up schools of their own in the provinces. Who was it that prevented the passing of this obnoxious measure? It was the Bishops of the Church of England. He would say therefore, long may they remain to stand up for the purity and social dignity of English life. There was a lot of talk about con-

scientious scruples in certain quarters, but unfortunately it seemed to be thought by these political agitators that Churchmen have no consciences, and therefore no conscientious objections ; but he was prepared to say that they had thousands of clergymen—aye, and bishops by the dozen—who were prepared, he trusted, to refuse the Sacrament to any man that transgressed the law of God in regard to this matter. Very probably they would hear threats to impose penalties on those clergymen who would refuse to administer the Sacrament to such sinners and evil livers ; but if those men who were agitating in this manner were honest, they would say, we, as Dissenters, have conscientious objections and will therefore try to relieve the consciences of the Church of England clergy in this matter. But, no ; this measure was simply used by a number of their opponents in order to raise a feeling against the Church, and so to gain their own ends.

It was all very well to come to meetings and to hold up their hands, but what were they going to do when they went home? How were they going to oppose the passing of this measure and to influence public opinion against it? He was well aware there were many public men who did not thoroughly understand the subject. In this matter the Church of England Working Men's Society were becoming teachers of their brethren. The Society had published a little pamphlet which put the whole case in a nutshell, and he would suggest they should procure this pamphlet, and having mastered it, communicate it to their fellow working men. In doing that they would be doing something tangible to prevent this measure becoming law. He would conclude by expressing the hope that everyone in the room would do their utmost to prevent the passing of this iniquitous measure.

Mr. SIMMONDS (Dover) said he thought the last speaker

had hit the nail on the head when he said that if it had not been for certain rich persons, and individuals of title, who had broken the law by contracting these unions, they should not have heard anything about this measure. That was at the top and bottom of the whole of this agitation. It was a most disgraceful thing that some of our nobility, and one might go a little higher than that, should be trying to break a great law established by the Church. He was quite sure that if the promoters of this Bill only considered the very great harm that would be done to society by the passing of this measure, they would hesitate before they tampered with a matter of this description. It touched the home of the working man more than anything that had been done in the way of tampering with the Church. It had been said in the House of Commons that this was a working man's question. He was quite sure, speaking as a working man, and coming into contact with a great many working men in the course of the year, that the working man had too much respect for the relationship to do away with sisters-in-law. He believed that if they persisted in asserting that this was a working man's question, the promoters of the measure would yet find that they were treading on a very soft corn of the working man. Why should it be brought forward under the false pretence that it was a working man's question. There was no doubt that before another twelve months there would be a General Election. It was not altogether prudent for the Society to interfere in any shape or form with politics, but he would beg of his fellow working men to bear in mind at the next General Election to get from Parliamentary candidates a plain 'yes' or 'no' as to the way they would vote on this, or any other Church measure. He maintained that they had this matter in their own hands if they chose to act properly. They had been

asleep in the past, but now that they knew that the Church cared for them, that the Church was their home, and that the Church taught the dignity of manhood, they must support her, even at the hustings. They must support at the next General Election those candidates who would vote against this measure, and oppose those who would vote for it. Let them do away with politics as politics, but not do away with the laws of the Church. A great deal had been said that the social part of the working man's home would be far more comfortable if he had his deceased wife's sister to look after his children or his home. Even if it were possible, it would not be proper to place the deceased wife's sister in the home within twelve months after the wife's death. Indeed, he thought the social portion of this question touched their consciences quite as much as the religious part. He therefore hoped they would continue to use their best endeavours to oppose this Bill. It was said that a conscience clause would be inserted in the Bill, similar to the one which had been introduced in the Divorce Act, But they did not want to see any more strife in the Church. They did not want to see a couple at the altar refused to be married by their Priests, which they would do if they were to present themselves. And in this course there were some Bishops and a large number of the Clergy who would uphold those Priests in that course. Should this Bill become law, they must pledge themselves to uphold those of the Clergy who would resist its provisions. If a couple presented themselves for marriage, or for the Blessed Sacrament, and if the clergyman refused to perform these rites, they, as loyal Churchmen, must uphold that clergyman in declining to commit such a sacrilegious act. As they all knew, prevention is better than cure, and if they were determined to vote for no candidate who would support this

measure, they might depend upon it that the Bill would have to be abandoned by its promoters.

Mr. VICE-PRESIDENT PLANT said,—It is my privilege to be able to say a few words in supporting the resolution which we have to submit to this meeting. It is assuredly one of the most important subjects which we as Church of England Working Men have to dispose of at the present time. Those who desire the passing of the Deceased Wife's Sister Bill would have us believe that they are legislating in the interest of the working classes. But we are not to be caught by the clap-trap of those political agitators who use working men as tools to accomplish their unholy purposes.

Working men as a rule are content with the existing state of the Marriage Law, and not one in a thousand (if the Bill were passed to-morrow) would ever think of marrying their sisters-in-law. We don't believe that the great majority of the people are at all enamoured with the passing of this measure, any more than they would be (if allowed by law) to marry the deceased wife's sister.

I have had the pleasure of standing by the side of some hundreds of couples who have entered the Holy Estate of Matrimony, and I have spoken to some of the most intelligent upon this subject; some have said that they had not studied it, and therefore knew little or nothing about it, whilst others were of opinion that it is for the interest of society at large not to allow families to marry their own kindred, or affinity, but to diffuse the obligation of love, by joining in alliance with those who were not related to them in any way whatever. This, I think, is the opinion of most sensible men who know anything of the subject. I have listened with deep interest to the previous speakers, and I consider that they have in a very marked degree divested

the Deceased Wife's Sister Bill of most of its flimsy and superficial arguments, and have already presented it to this meeting in all its naked deformity ; and I also believe at the proper time that this meeting will come to the conclusion that the legalisation of marriage with the deceased wife's sister is not at all desired by the working classes. This Bill is a pure modern invention. It is a scheme to suit their own selfish purposes, and not in any way to benefit society at large. The Bill is not in accordance with the Word of God. It has not the seal or the sanction of the Church. It has not the authority of the Prayer Book. It has not the goodwill or wishes of the people. It has neither right nor morality to sanction it. If this Bill becomes law, it will implant deeply the roots of incest, the fruit of which all right-minded men must necessarily deplore.

Will this Bill, with its demoralising tendencies, gain the sanction of this meeting? I trow not. Then, let us show, by our united action this evening, that the statements of those who would force this Bill upon us are as much misleading and injurious as they are untruthful. Let us do all we can to stay the Socialistic advances upon our Church's sacred rights and privileges, and especially at this time when Socialism is taking such deep root in the country. Let her pulpits be utilised in bringing this sacred subject more fully before the public, for it is to be feared that lax views on this subject are prevalent among many who profess and call themselves *Churchmen*. In conclusion—If, by supporting this Resolution, you in any way prevent this unrighteous measure becoming the law of the land, you will have the pleasing satisfaction to know that you have been instrumental under God in preserving intact the sanctity of marriage.

Mr. VICE-PRESIDENT SPALDING thought that every

Christian throughout the length and breadth of the land, was, as a matter of duty, bound to accept and act upon the received opinion of Christendom from the earliest ages till now, and, as in this instance, to oppose so iniquitous a measure tooth and nail.

Mr. AKERY (of Chard) said there was also a practical side to this matter, which he should have been glad to go into, were it not that time pressed. He might say that he represented a Branch situated in the Western division of Somerset, where in the early part of this year they had an Election for a representative in Parliament. During that Election they interviewed the candidates, or rather the Secretary of his Branch wrote to the candidates asking their opinions upon this and other Church questions. He (Mr. Akery) had the pleasure to inform them that, although the chairman of his Branch was opposed to the political principles of the candidate who was more in favour of the measures which they should be glad to see carried out, yet he and other members voted against their party, and gave that candidate their votes.

The PRESIDENT then put the Resolution, which was carried without a single dissident.

Publications of the Church of England Working Men's Society.

Facts and Fictions. 1d. each, 6s. per 100.

Can a Man Marry his Deceased Wife's Sister? 3d. per dozen, 1s. 6d. per 100.

Appeal to Working Men. 3d. per dozen, 1s. 6d. per 100.

Shall a Man Marry his Deceased Wife's Sister? 4d. per dozen, 2s. per 100.

Clap-Trap and Dishonesty. 4d. per dozen, 2s. per 100.

Marriage Law Defence Union Tracts.

No. XLVII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

PLEA FOR MERCY FOR SISTERS-IN-LAW.

BROTHERS-IN-LAW, Sisters-in-law : what relation is intended by this name? Surely one in which marriage is impossible, or there would be no meaning in it—an empty name.

Persons who from circumstances have *no* such connections can hardly realise their nature and intimacy. *My* sisters are *your* sisters, *my* brothers *your* brothers, is the feeling of an affectionate and united family. In hours of joy and grief they must be one. Husband and wife are *one*.

In times of care, *all* can be shared ; in bereavement, such relatives are often invaluable. In the family circle, but less closely tied, they render services the more afflicted ones cannot bear, and are most useful, seeing things from another point of view, but with similar aim.

When young mothers are laid by, their sisters can be with the brothers-in-law, at all times, under every circumstance, as no other visitors can be. They may manage the household, rule the nursery, order and preside over the dinners, be a constant medium of communication between the upstairs mamma and the downstairs papa, servants, and friends. They can play with the children, receive the visitors, make the house cheerful and comfortable in every way, until mamma returns to her own post. And if, alas ! the sickness be fatal, the sister-in-law is the natural resource of the sorrowing husband ; *she* sorrows also, for herself, for him, and for the little motherless children ; to her he can pour

out his grief, to her the children naturally turn, servants obey her, the house goes on in order, even in deep sorrow. It may be long before any joyous meetings or greetings can take place ; in time, peace will come, soft moonlight instead of sunshine, but better than darkness and despair.

This result can, and does, often occur now in domestic life, while the marriage law remains as it is. It would be wholly impossible if it be altered. There could be no more intimacy than society allows to *friends*—in fact, in most cases, none *at all* ; every kindly offer would be misunderstood, if not by the parties concerned, by servants and acquaintances. No sister-in-law could then live with a widowed brother-in-law without marrying him, any more than a lady-friend could, if marriage were *possible*. In the moments of greatest desolation, the father and little children must bear their burden, unaided by their natural helpers.

Even if these marriages were *ultimately* thought desirable in some respects, as some persons do, no one surely could wish the dead wife should have *no* mourning, that ‘funereal bakemeats should furnish the marriage feast.’ And what would they do with the interval, now spent often in the consolation of shared grief? The natural people for the husband to seek are the wife’s family—mother—sisters—to weep together and talk of the lost one, mutually dear. As time wears on and wounds heal, other ties may be formed, and far better in fresh blood and changed life.

Nothing is here intended against second marriages. A wisely-chosen step-mother is far better than *no* mother for small children. Otherwise they and their father are the prey of nurses and governesses, while little children ; the girls afterwards are apt to become fast or morbid, the boys wild or shut up.

In society the girls have no chaperone, and are too independent. The father, probably growing old, cannot judge the minutiae of rules for girls as women can, and is liable to be over-harsh or over-indulgent.

It may be said, and is said by some, 'Let the sister-in-law marry the brother-in-law, and so console him, and fill a mother's place.' But in many—indeed, in most—cases, the *woman* does not wish this. The man may, but she does *not*, and then she can do nothing for her sister's children in their hour of greatest need. Many women are well content, for a year or two, to help their relatives at such times, when their hearts are softened by sorrow, who do not like nor love their brothers-in-law, nor wish to be their wives.

And often men may not wish to marry their sisters-in-law; perhaps they are older, invalid, unsuited, while yet they are very grateful to them for aid in an interregnum.

It is certainly a point in this matter that ought to be well weighed, in common justice, viz., that the reversing of the present law of marriage is distasteful to almost all women.

Men appear to wish it:

Women to shrink from it.

It belongs to a period before Christianity, when women were forced into marriages they hated.

It is not to argue for women's *rights*; to follow their *instincts*, generally admitted to be purer than those of men. Many a girl has said, 'If there were not another man in the world, I would not marry my brother-in-law.'

It may be quite true that such marriages have been obliged to be permitted in the colonies, from the great dearth of women; but that does not hold good in England, in the redundancy of the female element.

And where there is every tree of the garden to eat of

freely, why should people set their minds on the only one forbidden?

There is another aspect of the matter. The present Bill does not authorise marriages with two brothers in succession, for which there is more cause, and, to some minds, Bible sanction.

Men shrink in disgust from this, as *women* from the other. Men making the laws take care not to do what offends *them*. It needs little chivalry to do the same for helpless women. As to the *poor* wishing this change, the best authorities say they do *not*. Poor women are generally at work, getting their living—not free, like the rich, to change their domicile at will; and in their cases marriages would have to be immediate, from paucity of house accommodation. The parties who desire this change are the *rich*, who, having already broken the law of their church and their land, wish to be freed from the consequences of their conduct, and willingly scatter gold as water, in the hope of varnishing themselves and their children with tardy respectability. One side remains to consider. It is said that England is the only country of this law. And England is the country purest in domestic life.

In countries where the reverse law prevails, sisters-in-law *never* live with widowed brothers-in-law. Propriety forbids it, as it must everywhere in civilised countries. The broken-hearted families and desolate homes caused by such a change will open the eyes, too late, of those who have forced this on their country.

A SISTER-IN-LAW.

Marriage Law Defence Union Tracts.

No. XLVIII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

The Duke of Argyll said

In the House of Lords on the 24th May, 1886, when moving the rejection of the Bill to legalise marriage with a Deceased Wife's Sister :—

MY LORDS : I can assure the House that it is with the greatest possible reluctance that I have undertaken the duty of moving the rejection of this Bill ; not that I have any doubt of the duty of this House to reject it—I have none whatever—but I have been afraid that this cause might suffer in my hands, and your lordships will understand my feelings on this subject when I tell you what my connection with it has actually been. I have now had the honour of being a member of this House for nearly forty years, and on looking back I find that this Bill, or a Bill having the same object, has been before us, on the average, once every three years during the whole of that time. I have uniformly voted against it, but until comparatively the other day, I have also maintained a rigid silence upon the subject. I have done so for several reasons. In the first place I was quite conscious that my opinion in regard to it rested mainly upon tradition and authority. In Scotland, in my early days, the connection that this Bill proposes to legalise was regarded with universal abhorrence. I recollect hearing of a marriage of this kind having been contracted in Edinburgh, many years ago, and the persons concerned were obliged to leave the country, having found that they were not received in any society in Scotland. Shortly before I entered your lordships' House I became closely connected by family ties with one who was the principal supporter of this Bill in the other House of Parliament—I mean the then Lord Francis Egerton, afterwards a member of this House under the title of the Earl of Ellesmere. He was a man for

whom I had the highest affection and regard. About the same time I also became aware that the same opinion was held by another man of a very different kind, but with whom also I had some old relations, namely, the late Dr. Hook, of Leeds, afterwards Dean of Chichester. I cannot say that the opinions of these two men changed my view, but they were enough to convince me that there were two sides to the question, whilst, as I have already said, it was one which I had never myself personally examined. I am not at all ashamed to make this confession to the House, because I deny the right of small minorities of men to force us whenever they please, to reopen the fundamental laws of our society, which have been law for many centuries. Then, after a long interval, came the speech which has been alluded to by the noble duke (the Duke of St. Albans), the speech of the Bishop of Peterborough, whose absence I regret this evening, in which he said, or was understood to say, that he gave up the scriptural argument upon the subject. What he did say, I believe, or what he meant to say, was very different, namely this, that he gave up the stress which had hitherto been laid upon one particular text of Scripture. But he was understood to say, and for the moment I myself understood him to say, that he gave up the argument that this particular marriage was forbidden by Scripture. My lords, I then felt that the time had come when it was absolutely necessary to look into the merits of this question from an independent point of view. I have done so with great care, and the result has been a conviction such as I never had before in favour of the present law, and against any relaxation of its provisions. I now venture to ask the House for a short time to follow me along the path which my own mind has taken on the subject.

And now let us go to the heart of the question at once, and ask, What is our right, what is the right of Society, to forbid the marriage of persons related in this particular degree? What right have we to prevent individuals exercising

the freedom of their own discretion in this matter? This is the first question that meets us, but it obviously resolves itself at once into the further question, What is our right, what is the right of Society, to forbid marriage between persons of any degree?

All such laws are in their nature limits placed upon individual freedom, and the question thus arises, What is the right of Society to limit the freedom of individuals in these matters? The answer is plain. We have this right because the law of marriage in its two great branches,—the conditions under which marriage may be contracted, and the conditions under which marriage may be dissolved,—is a law which lies at the foundation of Society. Nothing which touches it can be indifferent to us. It is very easy to admit this as a general proposition, but perhaps few realise its tremendous truth. And yet we have only to look at the present condition of the world to see the workings of it. Why is it, for example, that all the Mahommedan Governments of the world are in a state of irretrievable decay? It cannot be ascribed to Race. Mahommedanism has possessed itself of many nations, some of them of the same stock as our own. Yet every one of these nations, without a single exception, are decaying nations—the remains of Empires hasting to extinction. I do not ascribe this conspicuous fact to the effect of any mere Theological doctrine—such as Monotheism as distinguished from Trinitarianism—but I do ascribe it, and think it can be clearly traced, to Polygamy as a practice, and to the consequent extinction of the Family as the basis of Society. The corruption of manners, the want of continuity in character and ability, the effeminacy of Rulers, the instability of Thrones,—all stand in direct connection with the virtual abolition of marriage, and of the Family. And do not let us think, my lords, that we are safe from such danger in these matters. Polygamy has been revived by the inhabitants of a whole territory in the United States, and it constitutes one of the most serious

internal difficulties with which the Government of the Union has now to deal. But the Mormons are recruited from Europe, and it is from the bosom of our own Society that its doctrines and practices have come. Neither here nor elsewhere can there be any security unless Authority asserts its supreme right and power over all the conditions of the law of marriage. In the voluminous, and I must say painful, private correspondence which has been forced upon me on this subject, I have found that many persons do not seem clearly to understand or fully to recognise the supreme and absolute right of Society in this matter. A very large proportion of those letters have demanded in indignant terms what right we have to prevent these marriages simply because we do not ourselves individually approve of them. In short, they dispute the right of Society to enact this prohibition. So far as the right is concerned my answer is plain, that the right is the same in regard to this particular marriage as in regard to the marriage of the nearest degrees of consanguinity. But the second question which arises is, Granting the right, what need is there for our exercising the right? Cannot the individual Will be trusted in this matter? Cannot we trust men to avoid marriages which are unnatural or unseemly? No, my lords, we cannot. There is nothing of which we may be more certain than this, that Mankind have no instincts in this matter which can be trusted. The reason of individual men is wholly faithless on all subjects connected with the relation of the sexes. This is the assumption upon which all marriage laws are founded. If the individual Will could be trusted in these matters there would be no necessity for any marriage laws at all. It is indeed wonderful, and almost mysterious, that in this, the nearest and dearest of all the concerns of life, it should be necessary,—a confessed necessity,—that we should be placed under restraint and rule. But so it is, and every human government has confessed the necessity by marriage laws of some kind or another, which they enforce because they know that they must be en-

forced in order to prevent the most tremendous dangers to society.

Well then, my lords, we are now prepared to repel two pleas which are commonly urged in favour of the Bill: first, the assertion of the absolute right to individual freedom in the matter, a plea which would apply not only to this marriage but to all other marriages which are prohibited, and especially would apply to the doctrine which is of the essence of the Institution, namely, the doctrine of its indissolubility. It is commonly said that marriage is a civil contract, but if it be a civil contract it has incidents which are peculiar to itself, for there is no other civil contract, so far as I know, which is not dissoluble by the consent of the two parties who are concerned, whereas marriage by the law of all nations has been made indissoluble, except for certain limited and specified causes. It follows, therefore, that it is a necessary part of all marriage laws that the freedom of the individual Will is placed under direct restraint. Another plea is disposed of by these facts, and that is the plea of inconvenience arising in particular cases. This is a very common argument in favour of this particular kind of marriage, but it applies—and much more strongly—to many other cases and to many other circumstances arising out of the laws of marriage. It applies above all to the doctrine of indissolubility to which I have just referred. We must all know cases, arising out of this feature of the marriage law, of the most terrible inconvenience and misfortune. Two young persons become engaged and marry, afterwards finding their characters wholly incompatible, or one of them perhaps finding the other hopelessly vicious and corrupt. This is a very common case, and many lives are spent in misery in consequence; but we acknowledge that these evils must be endured for the sake of the general principle. And so it is with the prohibited degrees of marriage. The amount of misfortune suffered by prohibiting a man from marrying his deceased wife's sister is as nothing compared

with the inconveniences which are constantly suffered from other prohibitions and disabilities which are inseparable from the marriage law.

I think I may assume that I have now proved that Society has the right, and further that Society has the need, of issuing prohibitions of this kind. But now a further question arises, What guide has Society in framing its marriage law? This is a tremendous question. If individual instinct cannot be trusted in these matters, is it quite certain that the collective instinct of Society can be more safely trusted? Where the units are corrupt, are we quite sure that the collective units must be wise? I repeat, therefore, the question, What is to be the guide of Society in drawing up marriage laws? Can we refer to primeval times, to some golden age? Can we hear the words repeated, in respect to this, that, and the other point, 'In the beginning it was not so'? We know that on one occasion these words were uttered, and we know that their effect has been to kill polygamy and indiscriminate divorce. But on other details of the marriage law we are without this guide. What other guide have we? Can we go to Reason or to Science? No, my lords; both of these are helpless. We know nothing of Primeval Man. Geologists are still hunting in caves and in the gravels of rivers for relics of Primeval Man, and one very common doctrine among scientific men now is that Primeval Man was nothing better than a savage. If this be so, although I do not admit it, it follows that the highest work of Reason in this matter must be to choose some Authority which we acknowledge to be legitimate. But in seeking for such authority we have no other recourse than to go to what is best and greatest in the known history of our own race. The question then recurs—To whom shall we go? Is there any Authority that we have reason to believe has spoken upon this subject the words of eternal truth? My lords, my answer to this question—let me state it frankly—is that we must go in the first

place to the literature and the history of the Jews, that name so strangely mingled with contending memories of glory and of reproach. My lords, I am afraid that the reproach is too often remembered whilst the glory is forgotten. I rejoice to think, indeed, that in our society and in this country all feelings of religious antipathy are gone. We have been lately shocked by seeing a revival in modern Europe of those persecutions which were the disgrace of Christianity in the Middle Ages. No feeling of this sort remains among us. We have admitted the Jews to both Houses of Parliament. They are honoured members of our society, and we know that many of them perform their duties to society better than many Christians. Nevertheless there is a leaven of the old feeling which still remains, although it takes a new form. Instead of religious antipathy we now have the language of philosophical contempt. I heard the tones and echoes of it even to-night in the speech of my noble friend, the noble duke who has introduced this measure. The Jews are now often spoken of as a small and insignificant people, semi-barbarous in their condition, and the question is asked why we should refer to them in any matter of morals or religion? This is the language of many who call themselves 'thinkers' in the present day. Yet surely these men might remember that the smallness of the Jewish people is not a discovery of theirs! The Jews were constantly reminded of it by their own Prophets. Do we not remember the words addressed by Moses to the children of Abraham: 'The Lord did not set His love upon you nor choose you because ye were more in number than any people, for ye were the fewest of all people'? But the lesson which was drawn from this fact by the Prophets was the true lesson. For what the Jews had been, and what the Jews had done, was all the more wonderful because of the insignificance of their numbers. It all pointed to the higher Power, which was above them, and in them, and around them. I cannot myself understand any feeling of prejudice

against the Jews, nor can I understand any man doubting the reasonableness of that mysterious awe with which we should regard their History and their Laws. Quite apart from the teachings and traditions of the Christian Church, they have pre-eminent claims on our respect. The hereditary principle is valued in this House. Where has it been so wonderfully exhibited as amongst the Jews? for of every Jew we may say with tolerable certainty that he is a direct descendant from the great Patriarch who more than four thousand years ago moved from Ur of the Chaldees to the oaks of Mamre, and in whom all the families of the earth have indeed been blest. My lords, what are our pedigrees compared with that? What are our titles of nobility compared with these? We are proud when we can take back our titles to the Norman Conquest, or to the Anglo-Saxons who were conquered, or perhaps to the Celts who preceded the Anglo-Saxons. Yet these compared with the Jewish dates are but dates of yesterday.

Then with regard to the preservation of the Jews, and the manner in which they have been kept separate from other nations, is not this one of the great mysteries of the world? I know that it has been the result of what are called natural causes. Yes, but it has been by that co-operation of natural causes in which the Supernatural essentially consists. And one of those causes has been an intense conviction on the part of that people of their own glorious Past. This conviction is one ever-living evidence of the historic truth of their unique career.

Again, let us think for a moment of their contributions to our modern society,—how much it is that we owe to them. To them we owe the Tables of the Law, and the writings of the Prophets, and the Psalms of David, and the Sermon on the Mount, and more awful names than these remain behind. If any one could be taken from another planet and be told the history of all the nations, I think he would be disposed to say that, if there be a God in heaven, and if the Divine

voice has ever spoken to man on earth, it has spoken to us through the Jews. But here again we must, of course, exercise our reason in this as in other matters. It is necessary that we should eliminate from the history and the laws of the Jews everything that is purely local and purely tribal. We must seek the central principle of their Divine institutions ; that which severed them from the races, now utterly dead, by whom they were surrounded. Now, my lords, this is precisely what we have in the well-known eighteenth chapter of Leviticus. That chapter has nothing to do with the mere Ceremonial Law. It is expressly said to be an instruction to the Jews to avoid the 'abominable customs' of the people of Egypt and of Syria. And it is in this connection, and this connection only, that the law of marriage comes into review in the verses of that chapter. Now let us look at that law and the principles which are involved in it.

The first thing which is obvious in reading that chapter is that the table of prohibitions lays down a principle ; The second is, that it gives examples of that principle ; and, the third is, that these examples are not exhaustive. They serve to illustrate the principle, but they do not follow it into all its consequences. The principle is, first, that nearness of kin is to be a bar to marriage ; and, secondly, that Consanguinity is to be considered as equal to Affinity in the table of prohibitions. If we examine the examples which are actually specified, we shall find that they are twelve in number, and of these no less than seven, or a majority of the whole, are prohibitions affecting relations of Affinity, and not relations of Consanguinity. The principle on which the whole of these prohibitions hangs may best be seen in the explanation which is given in respect to one of them, namely, the prohibition of marrying a man's father's brother's wife, or in other words an aunt by marriage. Your lordships are aware that the marriage of uncle and niece by blood is well known on the continent of Europe, and although prohibited in the general law is not uncommonly allowed by dispensation. In our country it is altogether

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prohibited. The same connection, not by blood but by mere affinity, is prohibited in this chapter of Leviticus, and the explanation of the principle on which the prohibition is founded is given in these words : 'She is thine aunt.' A man may not marry his aunt by marriage, because it is said, 'She is thine aunt.'¹ This is the principle which runs through the whole prohibitions of Affinity, that the relations of a man's wife are his own relations in the same degree. Now, my lords, here is exactly what we are wanting. We find a marriage law founded upon a principle which in itself is clear and intelligible, and the specific examples which are mentioned in this chapter must be extended logically and reasonably to all the degrees of Affinity which come within its scope.

Well, my lords, I pass from the Jews, who certainly were in numbers a small and insignificant people, but a people who have had a greater influence in the world on all ethical and religious matters than any other people upon earth. I pass to another people of whom certainly it cannot be said that they were a small or an insignificant people. On the contrary, they were perhaps the noblest race which has ever walked the earth—I mean the Romans. We are too much accustomed to consider the Romans as mere soldiers. They were, no doubt, the greatest military nation in the history of the world. This aspect of them has been well expressed in the well-known couplet by a distinguished man who was for a short time a member of this House—I mean Lord Macaulay:

Thine, Roman, is the pilum,
Roman, the sword is thine.

But, my lords, there are millions of men whose ancestors never felt the impact of the Roman pilum, and never saw the flash of the Roman sword, who are now living under the influence of the Roman law. The Romans were as great in legislation as they were in war. They were the most magisterial people which have ever existed in the world. Many of your lordships will no doubt remember the celebrated chapter in which Gibbon arrests his stately narrative of the Decline and Fall, in order to give an account of the rise and progress of the Roman law. It is not my intention to trouble the House with many extracts, but a great passage, from a great writer, upon a great subject, can never be

¹ Levit. xviii. 14.

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altogether unwelcome in this House. I shall therefore read to your lordships the passage in which Gibbon gives an account of the principle laid down by the Roman law in respect to the subject which we are now discussing :

‘The magistrates of Justinian were not subject to the authority of the Church; the Emperor consulted the unbelieving civilians of antiquity, and the choice of matrimonial laws in the Code and Pandects is directed by the earthly motives of justice, policy, and the natural freedom of the sexes. The profane law-givers of Rome were never tempted by interest or superstition to multiply the forbidden degrees ; but they inflexibly condemned the marriage of sisters and brothers ; hesitated whether first cousins should be touched by the same interdict ; revered the parental character of aunts and uncles, and treated affinity and adoption as a just imitation of the ties of blood.’

I am glad to read this passage to your lordships, because I know that in the temper of many men’s minds in the present day, it will be accepted as in some respects more authoritative than the teachings of the Christian Church. There are many men in our time who care nothing for such names as those of Origen and Basil, of Ambrose and of Augustine, but who will bow their heads in reverence before the imperial names of Theodosius and Justinian.

And now, my lords, I pass to yet another people, a modern people and in many respects a very great one—I refer to the French people. Your lordships know that in the Revolution it was the pride and ambition of the French people to start afresh on all subjects affecting the foundations of Society. It was their pride to repudiate the authority of the Church and to set up in the cathedral of *Notre Dame* a woman whom they chose to represent as the Goddess of Reason. After the paroxysms of the Revolution had passed away, under the Consulate of Napoleon, the jurists of France were assembled to draw up and codify the laws of France, and in that code the Roman law was taken as the basis ; but those who sat upon the Commission were certainly more free than other men from all the mere traditions of Christian theology. Well, my lords, what was the result they came to on the subject which is now before us? I have here the actual account of the sittings of the Council of State which was held in the year 1805, with Napoleon himself in the

chair, upon the subject of the prohibited degrees of marriage. It appears that during the Revolution the marriage of brothers and sisters-in-law had been permitted, but the result of this sitting of the Council of State was to revert to the old law by which they were prohibited, and the account of the discussion is in my mind one of the highest interest. One of the members, Councillor Boulay, declared that there might be particular circumstances which would justify the marriage of brothers and sisters-in-law, but to give a general permission for it would be to throw a leaven of discord into families, and would create an interest on the part of brothers and sisters-in-law in promoting divorce of their brother or sister. But the most remarkable declaration was that of the Minister of Justice, who declared that the permission given by the law of 1792 for the marriage of brothers and sisters-in-law, had as its consequence brought trouble into families, and was the chief cause of the demands for divorce then before the Courts. Councillor Tronchet declared that the prohibition was demanded for the sake of morality, as a safeguard against the dangers arising from familiarity. Councillor Maleville said that all the Courts of Justice of France testified against these marriages. Now, my lords, observe the result of this discussion. I have shown you that the authority of the Jews, speaking as we believe under Divine direction, was against these marriages: I have shown you that the Roman law-givers, founding themselves entirely upon general principles of jurisprudence and of policy, affirmed the principle of the equality of Consanguinity and Affinity, and upon that principle forbade these marriages: and we have now the case of the French people, speaking neither in the spirit of theology nor upon mere general principles of law, but judging from the actual results which experience had shown to flow from a previous permission of these marriages, declaring unanimously against them. The First Consul, Napoleon, summed up the debate and put the various proposals to the vote. It was resolved (1) that marriage between brothers and sisters-in-law be prohibited, and (2) that no dispensation be permitted for these marriages. Such was the doctrine and the law of that great work the 'Code Civile,' commonly called the 'Code Napoléon.' I leave these remarkable facts to have their due weight with your lordships.

Well then, my lords, I turn from the authority of individual nations, and from any law to the authority of Reason and of Logic, and I must say that if Society is to interfere at all with the freedom of individual men, on matters affecting the nearest and dearest interests of their life, Society is bound to found its prohibitions upon some definite and intelligible principle, and to give to that principle a consistent application. On this ground therefore I venture to affirm that all the prohibitions of Affinity must stand or fall together. During the debate of last year I recollect putting the case of a man marrying his wife's daughter by a former marriage. My noble friend the Secretary for India (Lord Kimberley) expressed his greatest abhorrence of such a union, and indignantly denied that because he was in favour of this Bill he should be in favour of a Bill legalising such a union. But I doubt whether my noble friend will be able to maintain this distinction. If we repudiate Affinity as being equal to Consanguinity in one case, it will be difficult to uphold it in any other. The common idea is that such a marriage as that to which I have alluded must be unnatural, on account of great disparity of age. But this need not be always so. I remember myself a case in which a young and very handsome man married a widow, older than himself, who had two daughters, and between this step-father and his step-daughters there was no disparity of age at all greater than that which is quite common between husband and wife. In such cases it might very well arise that on the mere score of age marriage might not seem unnatural, and if the prohibitions of Affinity are discarded I see nothing which would stand in the way of such a union. Lord John Russell, among others, admitted that all the degrees of Affinity must stand or fall together, and he consistently declared that he was in favour of the abolition of them all.

As regards the particular Bill before the House, I was surprised to hear my noble friend who introduced it (the Duke of St. Albans) speak of the confusion of the present law. I do not know what my noble friend referred to, but I do know that if this Bill passes the law will be reduced to a state of utter inconsistency and confusion. In the Bill which was before this House two years ago there was a clause introduced to meet an objection which had been raised in a previous year by the late Lord Cairns. Your

lordships probably know that under the Divorce Act a woman may divorce her husband not for ordinary adultery but only for incestuous adultery. But under the existing law adultery with her sister would be incestuous adultery. The moment this Bill passes, however, it would cease to be so, and therefore the result will be that a man might carry on a criminal intrigue with his wife's sister in her own house, and she, under the Divorce Act, would have no recourse against him for so monstrous an outrage. In order to meet this case, the Bill which was introduced by the late Lord Houghton two years ago had a special clause keeping alive the right of the wife to the remedy of divorce in such a case as this. That is to say, connection with the wife's sister was deprived of its incestuous character for the purposes of marriage, but an intrigue with her was retained in the class of incestuous adultery for the purposes of divorce. Absurd as this was, it avoided a gross injustice which would be involved in the passage of the Bill now before the House. I must express my surprise that any lawyer now in your lordships' House should vote for a Bill which would reduce the law to such confusion, and would involve such great injustice in the relations between husband and wife.

My lords, it has been commonly asserted and often repeated by the supporters of this measure, that the marriage between a man and his deceased wife's sister was rendered illegal for the first time by the Act known as Lord Lyndhurst's Act. It was constantly said that before that date this marriage was 'voidable but not void,' and I remember being myself deceived by this statement and thinking that it presented a serious difficulty in the legal history of the law. My lords, I never was so surprised in my life as when on looking into Lord Lyndhurst's Act to I found what the facts really are. There is not a word of truth in this argument, which has been so much employed. Before Lord Lyndhurst's Act there was no distinction whatever between this particular kind of marriage and all the other marriages within the prohibited degrees. They were all equally in the position of being 'voidable, and not void.' This was equally true as regards the marriage of a man with his own sister, as with his wife's sister. It was simply the result of that condition of the law which made the voiding of marriages a matter of jurisdiction of a special Court, and which held all marriages to be

valid until they were rendered void by a particular process before that particular Court. Lord Lyndhurst's Act made no distinction whatever between these marriages and the other marriages within the prohibited degrees. The change was simply this, that all these marriages were made void *ab initio*, so that the result is that this marriage stands exactly on the same footing, with reference to other marriages, on which it stood before the passing of Lord Lyndhurst's Act. It is therefore not true that this particular kind of marriage was singled out by Lord Lyndhurst's Act, and was made void instead of being only voidable.

My lords, before I sit down I should like to allude to an appeal which was made by my noble friend, the late Lord Houghton, on the last occasion on which he spoke, to the younger members of your lordships' House. He appealed to them to free themselves from the antiquated prejudices of former times, from the authority of Priests and Parliaments, and to trust to their own reason and common sense. My lords, I am afraid I am among the number of those who have lost not a few of the advantages of youth without having acquired the authority of age, and your lordships may depend upon it that I am not going to assume the airs of a patriarch in this matter. But perhaps I may be allowed to say a few words upon this subject, as one who has at least spent much time and done some work in questions of speculative thought. There is no one who has felt more tempted than I have to think that these great problems of life and of morals can be solved by reason and by common sense. But I have always found the solution of such questions met by difficulties innumerable and insuperable. We have experience to refer to in this matter. The power of the human intellect to solve these questions has been tried already. It has been tried by the ancients, and I, for one, do not believe that our intellectual stature is greater than theirs. We stand upon a higher level as regards the accumulation of facts and the ascertainment of physical laws; but as regards purely intellectual power, I do not believe that we are an inch taller than the great minds of Greece and Rome. And as regards the eternal problems of morality, their distance and position is like that of the fixed stars; the whole course of human thought shows in them no parallax, no apparent change of place. What was the actual result as

regards the ancient world? Their moral doctrines were simply detestable. We all know from our school-days and from our school-books what was the general character of the morality of the Pagan world. But that evidence is scattered and occasional. If your lordships wish to see it brought together into a focus I should recommend you to look at a very remarkable book, written by a very remarkable man, called 'The Gentile and the Jew,' by the well-known Dr. Döllinger, of Munich, who approaches every subject with immense learning, and in the most impartial and judicial spirit. You will see in that work conclusive evidence that the morality of the highest minds among the ancients was not only low, but that in these matters it reduced them to a level which is really lower than the level of the beasts. Then, as regards modern thought, I do not think we have much to boast of. As far as I have seen, it is purely destructive; it pulls down a great deal and it builds up nothing. Dr. Newman has said, and I think has said with truth, that the human intellect when applied under such conditions, that is to say, apart from Tradition and Authority, is a universal solvent. It dissolves everything in an atmosphere of doubt and of uncertainty, whilst Reason working on false data leads us to conclusions which are utterly false and utterly corrupt. If we are to found Society at all, we must rest on the massive substructions which have been laid by the Christian Church. My lords, I am not myself a High Churchman. I am afraid that in this matter my opinions would not pass muster with my right reverend friends on the benches near me. I hold with that article in the Church of England which says that all churches, all ecclesiastical assemblies, may err and have often erred in matters most purely divine. But in the fundamental questions of morals, which lie at the foundation of all society, I believe that the Christian Church has inherited the glorious promise which was given by the greatest of the Prophets, 'Thou shalt hear a word behind thee, saying, "This is the way; walk ye in it, when ye turn to the right hand and when ye turn to the left."' This is the voice which it seems to me is now speaking to us from the earliest ages of the world, from Patriarchs, and Prophets, and Apostles, passing even through Roman jurists and modern reformers of the law, calling upon us to reject this Bill, and to stand firm upon the ancient ways.

Marriage Law Defence Union Tracts.

No. XLIX.

OFFICE: 35 KING STREET, WESTMINSTER, S.W.

*Speech of Mr. Percy Greg, at a Meeting in
Defence of the Marriage Law, held in
Willis's Rooms, 26th May, 1886.*

MY LORD DUKE, MY LORDS, LADIES AND GENTLEMEN:—
I have not spoken in public for thirty years, and never to such a meeting as this, and I must ask you to excuse me any shortcomings. Were this what is commonly called a religious question, a point of Mosaic Law, or Ecclesiastical tradition, I should not be here, much less should I presume to treat such a question in this presence. If I approve heartily and profoundly the resolution I have been asked to move, if I speak strongly, as I feel deeply and passionately, it is from a conviction independent of civil or canon law. I speak of this agitation and its consequences from experience—an experience which has taught me that the question is religious in the highest and widest sense, because it touches intimately and vitally the practical peace and purity of domestic life. It touches them at a hundred points which have never, perhaps, been forced upon your attention, of which the agitators are careful never to speak. I charge them unhesitatingly with presenting their case disingenuously, imperfectly and untruthfully. It is only because imperfectly and untruthfully presented that the proposed change has won so many unthinking votes. It is not a question whether a widower shall be allowed to marry his wife's sister. If that were all, I don't care whom widowers may marry. When a

wife is dead and forgotten it matters little whether the inconsolable relict console himself with a sister or a stranger. I am more disposed than is the fashion nowadays to mind my business and let alone my neighbour's.

My inclination is always in favour of freedom—freedom of conscience and conduct, freedom to each father to rule his own family as he will. But if we compel a man to connect his drains with the main sewer, if we forbid him to make his house the centre of physical infection, we cannot consistently affirm his right to poison our moral atmosphere. There are immoral relations with which society wisely forbears to meddle, because from their very character they are not, and cannot be, obtruded upon pure women, forced upon the eyes and understanding of innocent girls. But the moral poison of an incestuous marriage can no more be confined to a single family than the infection of typhus or smallpox. If we tolerate the offenders, the wife who is no wife—

“Like a new disease, unknown to men,
Creeps, no precaution used, among the crowd.”

Without wish, without consciousness of her own, her example

“stirs the pulse
With devil's leaps, and poisons half the young.”

If not, our daughters must learn why we refuse to receive her, why they are forbidden to associate with her children while yet confronted with them at school and in church: nay, my lord Duke, while those whom the Church denounces as living in notorious and open sin are too often permitted to kneel beside our wives and daughters at the altar, and profane the holiest of Christian sacraments. I know from experience how hard it is to deal sternly and dutifully with

such culprits. I know that nothing but social excommunication can check the pestilent influence of their example, and I know by experience that the tolerance they receive at the altar is the one unanswerable argument, the one insuperable obstacle, felt by laymen like myself in the fulfilment of a duty as imperative as it must always be painful. We cannot curse those whom the Church will not curse. Few there are with whom this would weigh less than with myself, and I find it weigh very heavily.

Our girls are forced to know that there are marriages which are no marriages, and these among professed Christians. Their moral faith is sapped and shaken, and just on the point on which that faith should be most absolute and unquestioning. The sister who has looked to her sister's husband, ever since she knew him, as a brother ; who, growing into womanhood, has accepted his protection, his control, his counsel, his affection, with simple sisterly trust, is taught to think, to doubt, to question the relation. If she be safe in his loyalty, in her sister's confidence, her own purity of mind, if she feels by instinct and experience that she is to him exactly as the sisters or children of his own blood, with whom she is acquainted, if she cannot distrust him, she is forced to know that the relation is one into which distrust has been introduced elsewhere, that others do not regard it as she does ; and the unquestioning simplicity, the stainless purity of her faith and love has been soiled in imagination if not in fact. Marriage is not the only relation, by no means, thank God, the only close, precious, sacred relation between men and women. Second marriages are so few, so small and exceptional a class of relations, that it would be wrong to impair for their sake any one of those ties which arise from, strengthen and sweeten the first marriage bond, the ties of blood

relationship or family intimacy. For one case in which the aunt is said to be the best stepmother there are twenty, probably a hundred, in which the brother-in-law is the safest or the only guardian. Better far for the happiness of the greatest number that every widower should be obliged to forego the bride of his choice than that tens of thousands of orphan girls should be denied the one care that would best replace a mother's, the only safe masculine and married guardianship open to them. And if this agitation be successful, that care must be withdrawn, that guardianship withheld, or rendered far other than they now are.

Are we to be told that the possibility of marriage will not affect the willingness of a married sister to take charge of motherless girls, the readiness and fitness of a brother-in-law to adopt them? No one can affirm this who knows men and women as they are. Those who say it don't say it because they think it. How many of them would dare to act upon it? It is not a question of the future marriage but of the present relation. Between those relations which admit of marriage and those which forbid it, every society in every land and every age which has attained a moral sense has drawn a line, clear, broad and black; a line guarded by one of the strongest, deepest, most imperative of moral instincts; a line at which passion recoils, which imagination itself shudders to cross. That line differs with different habits, traditions and morals; but nowhere is it defined by that which the agitators call the law of Nature; nowhere does its sanction rest on physical consequences; nowhere are its prohibitions confined to relations by blood. Nowhere, I think, do they extend to all those blood relations in which science and experience would recognise a natural barrier. But whatever the code, instinct everywhere respects and guards it. It is not the function of

moral instincts to define but to enforce the moral law ; and every domestic intimacy in which law and tradition recognise an inviolable barrier to marriage is safeguarded by the calmness, the purity, the reverence of parental and filial affection, or of brother and sister love. The truth is that the security of all relations between men and women rests on usage sanctified by tradition and enforced by law. The tradition, so long as it is recognised and obeyed, excludes the very thought of passion. The horror with which the sin of incest is regarded—a deeper horror than attaches to any crime forbidden by the Decalogue—is the absolute guarantee, the sole foundation of that passionless affection which hallows all the dearest ties of life, with one single exception.

Where marriages which may really be called unnatural—as between half brothers and sisters—are allowed, they are as common as others. Where they are forbidden, sin between half-brothers and half-sisters, for example, is as rare as any other outrage on domestic ties. In a word, where marriage is really impossible, there, in all healthy natures, passion is excluded, extinguished, undreamt of. In every case but this, the wife's relations are universally felt and acknowledged as the husband's. Her daughter is his daughter. Lord Granville's is, I should suppose, the only family in which husband and wife do not speak without distinction of nieces by blood and nieces by marriage. No man of ordinary prudence would propose, no wife whose faith in her husband is not proof to every trial will sanction, the adoption into their home of girls, save where closeness of relationship or difference of age renders jealousy palpably absurd, by rendering the growth of passion monstrous and in the last degree improbable. I suppose no childless husband would fear, no childless wife hesitate, to adopt

her niece. None feared to adopt her sister, till the frequency and impunity of this one form of incest sapped the authority of the law ; till wealth and station extorted for the offenders the tolerance of society ; till, in a word, men and women ceased to regard these marriages as impossible, and therefore ceased to regard the relation as absolutely and unquestionably sacred. Change the law, and of all adoptions, of all introductions of orphan strangers into the homes of their nearest and dearest, that of a wife's sister will be, if not the rarest, the most doubtful, trying and unsatisfactory. Nothing can make those strangers to the husband who are so near to the wife. Nothing can render safe and satisfactory the husband's relation as guardian and *de facto* father or elder brother to girls whom the law declares strangers. For one happy second marriage you will make miserable a dozen homes which neither husband nor wife can bear to close against her orphan sisters, but in which those sisters can no longer be as children.

It is a cruel, an iniquitous a hateful alternative that you will force upon men placed as I once was ; men who, still young, must deny a home to girls not young enough to be their daughters, or in doing their duty, peril consciously and visibly the happiness, peace, and purity of that home. However fully and justly they may rely on their untainted loyalty, the faith of their wives, the simple trust of their adopted sisters, they must know that they expose themselves to the suspicion of the world, the disturbing counsels of well-meaning and the impertinent malice of unfriendly relatives. Yet can a man who loves his wife help feeling that her favourite sister, perhaps the intimate companion of her whole life, or it may be the infant charge that from birth she has cherished almost with a mother's love, is as dear to him as the daughter of his own parents ?

Say at worst that this law deprives some thousands of children of an aunt's motherly care. It would never have done so had the law never been violated. But let that pass. Is it not plain that its reversal will consign twenty times as many young girls to the utter dreariness of a school or orphan asylum, deprive them of a home ; at the very age, it may be, when home is all to a girl—all both for her present and for her future?

And this is not all, nor the worst! Once legalise marriage with a wife's sister, and though you may refuse to legalise, you can no longer treat as criminal and abominable those other unions which rest on the same principle. When one neighbour can without reproach take to his bed the sister of a deceased wife, you cannot anathematise him who marries a wife's sister's daughter—her whom he now calls and thinks his niece. As little can you inflict the penalties of social excommunication, of social frowns, of moral reprobation, upon the widow who marries her husband's brother. I see not by what right you can thereafter forbid the most hateful, save one, of all forms of incest. For if a wife's sister be a stranger in blood, so is a wife's daughter. And it is not only that such marriages will take place. It will be long before they are otherwise than unnatural and repulsive exceptions ; always, I believe, they will be rare in the extreme. But you will have altered, nay, you will have destroyed, the relation. You will have narrowed by one half that circle within which men and women can be friends, brothers and sisters, fathers and daughters, by adoption and affection. You will have destroyed the security of acknowledged relationship ; you cannot give the security of complete strangership, with its restraints, reserves, and guardian instincts. And you will find that, to remove the badge of sin from a

thousand second marriages, you will have tempted tens of thousands to sins at present morally impossible. - You will have poisoned the peace of millions of families and soiled that purity of English domestic life of which our race in all quarters of the world has for a thousand years been justly proud ; which is the root of half its virtues and of very much of the greatness, yet more of the happiness, with which those virtues have been blessed by heaven.

At the above meeting, the LORD ARCHBISHOP OF CANTERBURY having taken the chair, it was moved by the Right Hon. J. H. A. MACDONALD, M.P. :

“That the law of the land prohibiting marriage with a wife’s sister being consistent with the law of God, and in harmony with the religious convictions of the country, ought to be maintained in its integrity.”

This was seconded by Mr. INGLIS, President of the Church of England Working Men’s Society, supported by the MASTER OF THE CHARTERHOUSE, and carried unanimously.

Mr. PERCY GREG moved :

“That this meeting condemns the pertinacious agitation in favour of this measure, so distasteful to the sound religious instincts of the country, as disquieting to domestic affections, and injurious to public morals.”

The Rev. Dr. MCGREGOR, of Edinburgh, seconded it. Mr. BELLAMY, a dockyard workman, also spoke, and the Resolution was carried unanimously.

The Duke of Northumberland at first occupied the chair, as the Archbishop of Canterbury was only able to come after the meeting, which was a crowded and hearty one, had begun.

Marriage Law Defence Union Tracts
No. L.

*The Judgment of the House of Lords,
March 18, 1861, in the Case of
Brook v. Brook*

*As delivered by Lord Chancellor Campbell and the Lords
Cranworth, St. Leonards, and Wensleydale.*

Also, on

*January 15, 1859, in the celebrated Scotch
Case of Fenton v. Livingstone, and
Livingstone v. Livingstone*

*Delivered by Lord Chancellor Chelmsford and the Lords
Brougham, Cranworth, and Wensleydale.*

LONDON
MARRIAGE LAW DEFENCE UNION
20 COCKSPUR STREET S.W.

E. W. ALLEN, 4 AVE MARIA LANE, E.C.

1887

MR. W. L. BROOK, of MELTHAM HALL, YORKSHIRE, married in May 1840 CHARLOTTE ARMITAGE, who died in 1847. In June 1850 MR. BROOK was married at Wandsbeck, near Altona, in Denmark, according to the Danish law, to EMILY ARMITAGE, his wife's sister; both being lawfully domiciled in England, but on a temporary visit in Denmark.

On an administration suit, VICE-CHANCELLOR STUART, with the advice of MR. JUSTICE CRESSWELL, declared the marriage to be invalid.

An appeal was carried to the House of Lords, where judgment was given as follows :—

The Lord Chancellor :—My Lords, the question which your Lordships are called upon to consider upon the present appeal is, 'Whether the marriage celebrated on June 9, 1850, in the Duchy of Holstein, in the kingdom of Denmark, between William Leigh Brook, a widower, and Emily Armitage, the sister of his deceased wife, they being British subjects then domiciled in England, and contemplating England as their place of matrimonial residence, is to be considered valid in England—marriage between a widower and the sister of his deceased wife being permitted by the law of Denmark?'

I am of opinion that this depends upon the question, whether such a marriage would have been held illegal, and might have been set aside, in a suit commenced in England in the lifetime of the parties, before the passing of Statute 5 & 6 Wm. IV. c. 54, commonly called 'Lord Lyndhurst's Act.'

I quite agree with what was said by my noble and learned friend during the argument on the Sussex Peerage Case, that this Act was not brought in to prohibit a man from marrying his former wife's sister, and that it does not render

any marriage illegal in England which was not illegal before. The object of the second section was to remedy a defect in our procedure, according to which, marriages illegal, as being within the prohibited degrees either of affinity or consanguinity—however contrary to law, human and Divine, and however shocking to the universal feelings of Christians—could not be questioned after the death of either party. But no marriage that was before lawful was prohibited by the Act ; and I am of opinion that no marriage can now be considered void under it, which, before the Act, might not in the lifetime of the parties have been avoided and set aside as illegal.

My Lords, there can be no doubt that, before Lord Lyndhurst's Act passed, a marriage between a widower and the sister of his deceased wife, if celebrated in England, was unlawful, and in the lifetime of the parties would have been annulled. Such a marriage was expressly prohibited by the Legislature of this country, and was prohibited expressly on the ground that it 'was contrary to God's law.' Sitting here judicially, we are not at liberty to consider whether such a marriage is or is not 'contrary to God's law,' nor whether it is expedient or inexpedient. Before the Reformation, the degrees of relationship by consanguinity and affinity within which marriage was forbidden were almost indefinitely multiplied ; but the prohibition might have been dispensed with by his Holiness the Pope, or those who represented him. At the Reformation the prohibited degrees were confined within the limits supposed to be expressly defined by Holy Scripture, and all dispensations were abolished. The prohibited degrees were those within which intercourse between the sexes was supposed to be forbidden as incestuous, and no distinction was made between relationship by blood or by affinity. The marriage of a man with the sister of his deceased wife is expressly within this

category. *Hill v. Good* (Vaughan, 302) and *Regina v. Chadwick* (11 Q. B. Rep. 205) are solemn decisions that such a marriage was illegal ; and, if celebrated in England, such a marriage unquestionably would now be void.

Indeed, this is not denied on the part of the Appellants. They rest their case entirely upon the fact that the marriage was celebrated in a foreign country, where the marriage of a man with the sister of his deceased wife is permitted.

My Lords, there can be no doubt of the general rule, that 'a foreign marriage, valid according to the law of the country where it is celebrated, is good everywhere.' But, my Lords, while the forms of entering into the contract of marriage are to be regulated by the *lex loci contractus*, the law of the country in which it is celebrated, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Although the forms of celebrating the foreign marriage may be different from those required by the law of the country of domicile, the marriage may be good everywhere. But if the contract of marriage is such in essentials as to be contrary to the law of the country of domicile, and it is declared void by that law, it is to be regarded as void in the country of domicile, though not contrary to the law of the country in which it was celebrated.

This qualification upon the rule that 'a marriage valid where celebrated is good everywhere,' is to be found in the writings of all eminent jurists who have discussed the subject.

I will give one quotation from Huberus, 'De Conflictu Legum,' sec. 2. 'Rectores imperiorum id comiter agunt, ut jura cujusque populi, intra terminos ejus exercita, teneant ubique suam vim, quatenus nihil potestati aut juri alterius

imperantis, ejusque civium, præjudicetur.' Then he gives 'Marriage' as the illustration. 'Matrimonium pertinet etiam ad has regulas. Si licitum est eo loco ubi contractum et celebratum est, ubique validum erit effectumque habebit, sub eâdem exceptione præjudicii aliis non creandi ; cui licet addere, si exempli nimis sit abominandi : ut si incestum juris gentium in secundo gradu contingeret alicubi esse permissum ; quod vix est ut usu venire possit.' Id. sec. 8. The same great jurist observes, 'Non ita præcise respiciendus est locus in quo contractus est initus, ut si partes alium in contrahendo locum respexerint, ille non potius sit considerandus. Contraxisse unusquisque in eo loco intelligitur in quo ut solveret se obligavit. Proinde et locus matrimonii contracti non tam is est ubi contractus nuptialis initus est, quam in quo contrahentes matrimonium exercere voluerunt.' Id. 10.

Mr. Justice Story, in his valuable treatise on 'The Conflict of Laws,' while he admits it to be the rule that 'a marriage valid where celebrated is good everywhere,' says there are exceptions ;—marriages involving polygamy and incest ; those positively prohibited by the public law of a country from motives of policy ; and those celebrated in foreign countries by subjects entitling themselves under special circumstances to the benefit of the laws of their own country. He adds—'In respect to the first exception, that of marriages involving polygamy and incest, Christianity is understood to prohibit polygamy and incest, and therefore no Christian country would recognise polygamy or incestuous marriages ; *but, when we speak of incestuous marriages, care must be taken to confine the doctrine to such cases as by the general consent of all Christendom are deemed incestuous.*'

The conclusion of this sentence was strongly relied upon by Sir Fitzroy Kelly, who alleged that many in England approved of marriages between a widower and the sister of his deceased wife, and that such marriages are permitted in

Protestant states on the continent of Europe, and in most of the States of America.

My Lords, sitting here as a judge to declare and enforce the law of England as fixed by King, Lords, and Commons, the supreme power of this realm, I do not feel myself at liberty to form any private opinion of my own on the subject, or to inquire into what may be the opinion of the majority of my fellow-citizens at home, or to try to find out the opinion of all Christendom.

I can as a judge only look to what was the solemnly pronounced opinion of the Legislature when the laws were passed which I am called upon to interpret. What means am I to resort to for the purpose of ascertaining the opinions of foreign nations? Is my interpretation of these laws to vary with variation of opinion in foreign countries? Change of opinion on any great question, at home or abroad, may be a good reason for the Legislature changing the law, but can be no reason for judges to vary their interpretation of the law.

Indeed, as Story allows marriages positively prohibited by the public law of a country, from motives of policy, to form an exception to the general rule as to the validity of marriage, he could hardly mean his qualification to apply to a country like England, in which the limits of marriages to be considered incestuous are exactly defined by public law.

That the Parliament of England, in framing the prohibited degrees within which marriages were forbidden, believed, and intimated their opinion, that all such marriages were incestuous, and contrary to God's word, I cannot doubt. All the degrees prohibited are brought into one category, and, although marriages within those degrees may be more or less revolting, they are placed on the same footing, and, before English tribunals, till the law is altered, they are to be treated alike.

An attempt has been made to prove that a marriage between a man and the sister of his deceased wife is declared by Lord Lyndhurst's Act to be no longer incestuous, but the enactment relied upon applies equally to all marriages within the prohibited degrees of *affinity*, and, on the same reasoning, would give validity to a marriage between a stepfather and his stepdaughter, or a stepson and his stepmother, which would be little less revolting than a marriage between parties nearly related by blood.

The general principles of jurisprudence which I have expounded have uniformly been acted upon by English tribunals. Thus, in the great case of *Hill v. Good*, in the time of Charles II., Lord Chief Justice Vaughan, and his brother judges of the Court of Common Pleas, held that, 'When an Act of Parliament declares a marriage to be against God's law, it must be admitted in all courts and proceedings of this kingdom to be so.'

His Lordship, after referring to the cases of *Harford v. Morris*, and *Warrender v. Warrender*, proceeded as follows: It is quite obvious that no civilised State can allow its domiciled subjects or citizens, by making a temporary visit to a foreign country, to enter into a contract to be performed in the place of domicile, if the contract is forbidden by the law of the place of domicile as contrary to religion, morality, or any of its fundamental institutions.

A marriage between a man and the sister of his deceased wife, being Danish subjects, domiciled in Denmark, may be good all over the world; and this may be so even if they were native-born English subjects, who had abandoned their English domicile, and were domiciled in Denmark. I am by no means prepared to say that the marriage in question ought to be, or would be, held valid in the Danish courts—proof being given that the parties were British subjects domiciled in England at the time of the marriage,—that

England was to be their matrimonial residence, and that by the law of England such a marriage is prohibited as being contrary to the law of God. The doctrine being established that the incidents of the contract of marriage celebrated in a foreign country are to be determined according to the law of the country in which the parties are domiciled, and mean to reside, the consequence seems to follow, that by this law must its validity or invalidity be determined.

Sir Fitzroy Kelly further urged, with great force, that both Sir Cresswell Cresswell and Vice-Chancellor Stuart had laid down that Lord Lyndhurst's Act binds all English subjects, wherever they may be, and prevents the relation of husband and wife from subsisting between any subjects of the realm of England within the prohibited degrees. I am bound to say, that, in my opinion, this is incorrect, and that Lord Lyndhurst's Act would not affect the law of marriage in any conquered colony in which a different law of marriage prevailed, whatever effect it might have in any other colony. I again repeat, that it was not meant by Lord Lyndhurst's Act to introduce any new prohibition of marriage in any part of the world. For this reason I do not rely on the 'Sussex Peerage Case' as an authority in point, although much reliance has been placed upon it. My opinion in this case does not rest on the notion of any personal incapacity to contract such a marriage being impressed by Lord Lyndhurst's Act on all Englishmen, and carried about with them all over the world, but on the ground of the marriage being prohibited in England as 'contrary to God's law.'

I will now examine the authorities relied upon by the counsel for the Appellants. They bring forward nothing from the writings of jurists, except the general rule that contracts are to be construed according to the *lex loci contractus*, and the saying of Story with regard to a marriage

being contrary to the precepts of the Christian religion, upon which I have already commented.

But there are various decisions which they bring forward as conclusive in their favour. They begin with *Compton v. Bearcroft*, and the class of cases in which it was held that Gretna Green marriages were valid in England, notwithstanding Lord Hardwicke's Marriage Act, 26 Geo. II. c. 33. In observing upon them, I do not lay any stress on the proviso in this Act, that it should not extend to marriages in Scotland, or beyond the seas; this being only an intimation of what might otherwise have been inferred, that its direct operation should be confined to England, and that marriages in Scotland, and beyond the seas, should continue to be viewed according to the law of Scotland and countries beyond the seas, as if the Act had not passed; but I do lay very great stress on the consideration that Lord Hardwicke's Act only regulates banns and licences, and the formalities by which the ceremony of marriage shall be celebrated. It does not touch the essentials of the contract, or prohibit any marriage which was before lawful, or render any marriage lawful which was before prohibited.

The formalities which it requires could only be observed in England, and the whole frame of it shows that it was only territorial. The nullifying clauses about banns and licences can only apply to marriages celebrated in England.

In this class of cases the contested marriage could only be challenged for want of banns or licence in the prescribed form. These formalities being observed, the marriages would all have been unimpeachable; but the marriage we are to decide upon has been declared by the Legislature to 'be contrary to God's law,' and on that ground it is absolutely prohibited. Here I may properly introduce the words of Mr. Justice Coleridge in *Regina v. Chadwick* (11 Q. B. Rep. 238), 'We are not on this occasion inquiring

what God's law or what the Levitical law is. *If the Parliament of that day legislated on a misinterpretation of God's law, we are bound to act upon the statute which they have passed.'*

His Lordship proceeded to comment on several other cases, and concluded as follows :—

The only remaining case is *Sutton v. Warren* (10 Metcalf, 451). The decision in this case was pronounced in 1845. I am sorry to say that it rather detracts from the high respect with which I have been in the habit of regarding American decisions resting upon general jurisprudence. The question was whether a marriage celebrated in England on November 24, 1834, between Samuel Sutton and Ann Hills, was to be held to be a valid marriage in the State of Massachusetts. The parties stood to each other in the relation of aunt and nephew, Ann Hills being own sister of the mother of Samuel Sutton. They were both natives of England and domiciled in England at the time of their marriage. About a year after their marriage they went to America, and resided as man and wife in the State of Massachusetts. By the law of that State a marriage between an aunt and her nephew is prohibited and is declared null and void. Nevertheless, the Supreme Court of Massachusetts held that this was to be considered a valid marriage in Massachusetts. But I am bound to say that the decision proceeded on a total misapprehension of the law of England. Hubbard, J., who delivered the judgment of the Court, considered that such a marriage was not contrary to the law of England. Now there can be no doubt, that, although contracted before the passing of 5 & 6 Wm. IV. c. 54, it was contrary to the law of England, and might have been set aside as incestuous, and that Act gave no protection whatsoever to a marriage within the prohibited degrees of con-

sanguinity, so that, if Samuel Sutton and Ann Hills were now to return to England, their marriage might still be declared null and void, and they might be proceeded against for incest. If this case is to be considered well decided and an authority to be followed, a marriage contrary to the law of the State in which it was celebrated, and in which the parties were domiciled, is to be held valid in another State into which they emigrate, although by the law of this State, as well as of the State of celebration and domicile, such a marriage is prohibited, and declared to be null and void. This decision, my Lords, may alarm us at the consequences which might follow from adopting foreign notions on such subjects, rather than adhering to the principles which have guided us and our fathers ever since the Reformation.

I have now, my Lords, as carefully as I could, considered and touched upon the arguments and authorities brought forward on behalf of the Appellants, and I must say that they seem to me quite insufficient to show that the decree appealed against is erroneous.

The law upon this subject may be changed by the Legislature, but I am bound to declare that in my opinion, by the existing law of England, this marriage is invalid.

It is therefore my duty to advise your Lordships to affirm the decree, and to dismiss the appeal.

Lord Cranworth, after stating the case, and that in his opinion the 5th and 6th William IV. c. 54 did not apply to the colonies, proceeded thus :—

Excluding, then, this more extensive operation of the enactment, it seems plain that the prospective effect of the Act is to make all marriages within the prohibited degrees absolutely void *ab initio*, dispensing with the necessity of a sentence in the Ecclesiastical Court declaring them void.

The persons whose marriages by the second section are declared to be void are the same persons, and only the same

persons, whose marriages, before the passing of that Act, might, during the lives of both parties, have been declared void by the Ecclesiastical Court.

The question, therefore, is, whether, before the passing of that statute, the Ecclesiastical Court could have declared the marriage now in dispute void. It certainly could, and must have done so, if it had been celebrated in England; and all that your Lordships have to say is, whether the circumstance that it was celebrated in a foreign country, where such unions are lawful, would have altered the conclusion at which the Court ought to have arrived.

In the first place, there is no doubt that the mere fact of a marriage having been celebrated in a foreign country did not exclude the jurisdiction of the Ecclesiastical Court while the jurisdiction as to marriages was exercised by them. It was of ordinary occurrence that the Court should entertain suits as to the validity of marriages contracted out of its jurisdiction, so that the question for decision is narrowed to the single point, whether, in deciding on the validity of this marriage if it had come into discussion before the year 1835, and during the lives of both the parties, the Ecclesiastical Court would have been guided by the law of this country, or by that of the country where the marriage was contracted.

The case was most elaborately argued at your Lordships' bar, and we were referred to very numerous authorities bearing on the subject. The conclusion at which I have arrived is the same as that which my noble and learned friend on the woolsack has come to, namely, that though in the case of marriages celebrated abroad the *lex loci contractus* must, *quoad solemnitates*, determine the validity of the contract, yet no law but our own can decide whether the contract is, or is not, one which the parties to it, being subjects of Her Majesty, domiciled in this country, might lawfully make.

There can be no doubt as to the power of every country

to make laws regulating the marriage of its own subjects, to declare who may marry, how they may marry, and what shall be the legal consequences of their marrying ; and if the marriages of all its subjects were contracted within its own boundaries no such difficulty as that which has arisen in the present case could exist ; but that is not the case. The intercourse of the people of all Christian countries among one another is so constant, and the number of the subjects of one country living or passing through another is so great, that the marriage of the subject of one country within the territories of another must be matter of frequent occurrence. So, again, if the laws of all countries were the same, as to who might marry, and what should constitute marriage, there would be no difficulty. But that is not the case, and hence it becomes necessary for every country to determine by what rule it will be guided in deciding on the validity of a marriage entered into beyond the area over which the authority of its own laws extends. The rule in this country, and I believe generally in all countries, is, that the marriage, if good in the country where it was contracted, is good everywhere, subject, however, to some qualifications, one of them being, that the marriage is not a marriage prohibited by the laws of the country to which the parties contracting matrimony belong.

The real question, therefore, is, whether the law of this country, by which the marriage now under consideration would certainly have been void, if celebrated in England, extends to English subjects casually being in Denmark.

I think it does. Of the power of the Legislature to determine what shall be the legal consequences of the acts of its own subjects, done abroad, there can be no doubt ; and whether the operation of any particular enactment is intended to be confined to acts done within the limits of this country, or to be of universal application, must be matter of construc-

tion, looking to the language used, and the nature and objects of the law.

It must be admitted that the statutes on this subject are in a confused state. But it must be taken as clear law that, though the two statutes of Henry VIII., *i.e.* the 25th Henry VIII. chapter 22, and the 28th Henry VIII. chapter 7 (being the only statutes which in terms prohibit marriage with a wife's sister as being contrary to God's law), are repealed; yet by two subsequent Acts of the same reign, namely, the 28th Henry VIII. chapter 16, and the 32nd Henry VIII. chapter 38, which had for their object to make good certain marriages, the prohibition is in substance revived or kept alive. For in both of them there is an exception of marriages prohibited by God's law, and in one of them, 28th Henry VIII. chapter 16, the language of the exception is, 'which marriages be not prohibited by God's laws limited and declared in the Act made in this present Parliament: ' that is, the repealed Act of the 28th Henry VIII. chapter 7. So that it is to that Act, though repealed, that we are to look in order to see what marriages the Legislature has prohibited as being contrary to God's law. It was perhaps unnecessary to advert to this after the decision of the Court of Queen's Bench in *Regina v. Chadwick*; but it is fit that the ground on which we proceed should be made perfectly clear.

Assuming then, as we must, that such marriages are not only prohibited by our law, but prohibited because they are contrary to the law of God, are we to understand the law as prohibiting them wheresoever celebrated, or only if they are celebrated in England? I cannot hesitate in the answer I must give to such an inquiry. The law, considering the grounds on which it makes the prohibition, must have intended to give it the widest possible operation. If such unions are declared by our law to be con-

trary to the laws of God, then persons having entered into them, and coming into this country, would in the eye of our law be living in a state of incestuous intercourse. It is impossible to believe that the law could have intended this.

It was contended that, according to the argument of the Respondents, such a marriage, even between two Danes, celebrated in Denmark, must be contrary to the law of God; and therefore, that, if the parties to it were to come to this country, we must consider them as living in incestuous intercourse; and that, if any question were to arise here as to the succession to their property, we must hold the issue of the second marriage to be illegitimate. But this is not so. We do not hold the marriage to be void because it is contrary to the law of God, but because our law has prohibited it on the ground of its being contrary to God's law. It is our law which makes the marriage void, and not the law of God. And our law does not affect to interfere with, or regulate, the marriages of any but those who are subject to its jurisdiction.

The authorities showing that the general rule, which gives validity to marriages contracted according to the laws of the place where they are contracted, is subject to the qualification I have mentioned, namely, that such marriages are not contrary to the laws of the land to which the parties contracting them belong, have been referred to, not only by my noble and learned friend, but in the able opinion of Sir Cresswell Cresswell, delivered in the court below, as also in the judgment of the Vice-Chancellor. I abstain, therefore, from going into them in detail. To do so would only be to repeat what is already fully before your Lordships.

I cannot, however, refrain from expressing my dissent from that part of Sir Cresswell Cresswell's able opinion, in which he repudiates a part of what is said by Mr. Justice

Story as to marriages which are to be held void on the ground of incest. That very learned writer, after stating in section 113 that marriages, valid where they are contracted, are in general to be held valid everywhere, proceeds thus : 'The most prominent, if not the only known, exceptions to the rule are marriages involving polygamy or incest, those positively prohibited by the public law of a country from motives of policy, and those celebrated in foreign countries by subjects entitling themselves under special circumstances to the laws of their own countries.' And then he adds, that, 'as to the first exception, Christianity is understood to prohibit polygamy and incest, and therefore no Christian country would recognise polygamy or incestuous marriages ; *but, when we speak of incestuous marriages, care must be taken to confine the doctrine to such cases as by the general consent of all Christendom are deemed incestuous.*' With this latter portion of the doctrine of Mr. Justice Story Sir Cresswell Cresswell does not agree. But I believe that this passage when correctly interpreted is strictly consonant to the law of nations. Story there is not speaking of marriages prohibited as incestuous by the municipal law of the country ; if so prohibited, they would be void under his second class of exceptional cases, no inquiry would be open as to the general opinion of Christendom. But suppose the case of a Christian country, in which there are no laws prohibiting marriages within any specified degrees of consanguinity or affinity, or declaring or defining what is incest ; still even these incestuous marriages would be held void, as polygamy would be held void, being forbidden by the Christian religion. But then, to ascertain what marriages are within that rule incestuous, a rule not depending on municipal laws, but extending generally to all Christian countries, recourse must be had to what is deemed incestuous by the general consent of Christendom. It could

never be held that the subjects of such a country were guilty of incest in contracting a marriage allowed and approved by a large portion of Christendom, merely because, in the contemplation of other Christian countries, it would be considered to be against God's laws. I have thought it right to enter into this explanation, because it is important that a writer so highly and justly respected as Mr. Justice Story should not be misunderstood, as, with all deference, I think he has been in the passage under consideration.

His Lordship then entered into an examination of the authorities cited, and ended by concurring in dismissing the appeal.

Lord St. Léonards :—My Lords, the question before the House is one of great importance, but not of much difficulty. The learned Counsel for the Appellants insisted, that as marriage was but a civil contract it must, by international law, depend upon the law of the country where it is contracted ; and that the question of domicile was excluded ; that marriages in Scotland were allowed, notwithstanding Lord Hardwicke's Marriage Act ; and that, but for the Act of William the Fourth, this marriage could not be impeached. It was admitted that this country would not recognise a contract in a foreign country which was contrary to religion or morality, or was criminal ; but it was argued that the allowance of such marriages as that under consideration by other states, showed that they were not contrary to religion or morality, or criminal, and that the very Act of William the Fourth virtually repealed any former law of this country impeaching the validity of such marriages as contrary to the law of God, for, if deemed to be contrary to God's law, Parliament would not have given legal validity to those which had been solemnised, and it was forcibly urged that no Act of Parliament treats a marriage with a deceased wife's sister as incestuous.

I consider this as purely an English question. It depends wholly on our own laws binding upon the Queen's subjects. The parties were domiciled subjects here, and the question of the validity of the marriage will affect the right to real estate. *Warrender v. Warrender* shows how the marriage contract may be affected by domicile: we cannot reject the consideration of the domicile of the parties in considering this question. I may at once relieve the case from any difficulty arising out of Scotch marriages, in fraud, as it is alleged, of our Marriage Act. When those marriages are solemnised according to the law of Scotland, they are no fraud upon the Act, for it expressly, amongst other exceptions, provides that nothing contained in it shall extend to Scotland. Lord Hardwicke observed in *Buller v. Freeman* (the case in *Ambler*), that there was a door open in the statute as to marriages beyond seas, and in Scotland. I may observe, that the door was purposely left open, such marriages having no bearing upon the question before the House.

The grounds upon which, in my opinion, the marriage in Denmark is void by our own law, depend upon our Acts of Parliament, and upon the rule that we do not admit any foreign law to be of force here where it is opposed by God's law, according to our own view of that law.

The argument, as I have already observed, for the Appellant was, that no law in this country branded marriages with a deceased wife's sister as incestuous. Let us see how this stands. The 25th Henry VIII. chapter 22, section 3, states 'that many inconveniences have fallen as well within this realm *as in others* arise by reason of marrying within the degrees of marriage *prohibited by God's laws*, that is to say . . . or any man to marry his wife's sister . . . which marriages, albeit they be plainly prohibited and detested by the laws of God,' &c. It then alludes to the usurped

dispensations by man's power, and declares that no man hath power to dispense with God's law. It then, by section 4, enacts that no persons, subjects or residents of this realm, or in any of the king's dominions, should from thenceforth marry within the said degrees. And if any person had been married within this realm, or in any of the king's dominions, within any of the degrees above expressed, and by any archbishop, etc., of the Church of England, should be separate from the bonds of such unlawful marriage, every such separation should be good, and the children under such unlawful marriage should not be lawful nor legitimate, any foreign laws, etc., to the contrary notwithstanding.

The statute of 28th Henry VIII., chapter 7, repealed the 25th Henry VIII., chapter 22, but by section 7 again prohibited at large the marriages prohibited by the 25th Henry VIII. The marriage of a man with his wife's sister is included in the prohibition, and that and the other prohibited marriages the Act states to be 'plainly prohibited and detested by the law of God.' The statute 28th Henry VIII., chapter 16, made good all past marriages whereof there was no divorce, and which marriages were not prohibited by God's laws, limited and declared in the Act made in this Parliament, or otherwise by Holy Scripture.

These Acts were followed by the 32nd Henry VIII., chapter 38, 'For marriages to stand notwithstanding pre-contracts.' It enacted that all marriages as within the Church of England which should be contracted between lawful persons (as by this Act were declared all persons to be lawful that were not prohibited by God's law to marry) were not to be affected by pre-contract, and that no reservation or prohibition, God's law except, should trouble or impeach any marriage without the Levitical degrees, and no process to the contrary was to be admitted within any of the

spiritual courts within this the king's realm, or any of his grace's other lands and dominions.

It appears from these Acts that the marriage in question is by the law of England declared to be against God's law and to be detested by God, plainly because, although there is only affinity between the parties, it was deemed, like cases of consanguinity, incestuous. We are not at liberty to consider whether the marriage is contrary to God's law and detested by God, for our law has already declared such to be the fact, and we must obey the law. That law has been so clearly and satisfactorily explained by the learned judges, in the case of the Queen *v.* Chadwick, as to render it unnecessary to observe further upon it, or to trace the repeals and re-enactments of the laws to which I have referred. As one of the learned judges observed, we need not thread the labyrinth of statutes to discover which of the enactments in question has been repealed or revived and which has not. We may use the prior Acts simply as the best interpreters of the Statute 32 Henry VIII., chapter 38, which is clearly in force.

This brings us to the 5th and 6th William IV., chapter 54, which was passed with a view to put an end to the uncertainty of the marriage contract arising from the decisions in our courts, that where the parties were within the prohibited degree of affinity the marriage was voidable only. The Act drew a distinction between affinity and consanguinity. It enacted that all past marriages between persons within the prohibited degrees of affinity should not be annulled for that cause by any sentence of the Ecclesiastical Court, provided that nothing in the Act should affect marriages between persons being within the prohibited degrees of consanguinity. And the Act then proceeds to enact that all marriages which should thereafter be celebrated between persons within the prohibited degrees of consanguinity or

affinity shall be absolutely null and void to all intents and purposes whatsoever. The recital stated the intention to make them *ipso facto* void, and not voidable. Nothing can be plainer. The statute created no further prohibition ; it treated the legal prohibition already in existence as well known by the general description in the Act. The construction of the Act was settled by the Queen *v.* Chadwick, the law of which case was not disputed at the bar. By that decision the marriage now in question would have been absolutely void had it been contracted in England.

This case then is reduced to the simple question, Is the marriage valid in this country because it was contracted in Denmark, where a marriage with a deceased wife's sister is valid ? This depends upon two questions, either of which, if adverse to the Appellants, would be fatal to the validity of the marriage ; namely, first, Will our courts admit the validity of a marriage abroad by an English subject domiciled here with his deceased wife's sister, because the marriage is valid in the country where it was contracted ? Second, Is such a marriage struck at by the 5th and 6th William IV. ?

I think that the marriage has no validity in this country on the first ground, for by our law such a marriage is forbidden as contrary in our views to God's law. The objection that Parliament gave validity to such marriages already had in cases of affinity, is no reason why, when we have in future carefully made all such marriages absolutely void, we should admit their validity in favour of the law of a foreign country. The learned Judge who assisted the learned Vice-Chancellor in the Court below came to the conclusion, after an elaborate review of the authorities, that a marriage contracted, by the subjects of a country in which they are domiciled, in another country is not to be held valid, if by contracting it the laws of their country are violated. This proposition is more extensive than the case before us requires

us to act upon, but I do not dissent from it : I shall not, however, dwell upon this point, because I think that upon the second point the marriage is clearly invalid. The Appellant relies upon the silence of the Act in respect to marriages abroad. Now the Act is general, and contains a large measure of relief, as well as a prohibition. It gives validity to all marriages celebrated before the passing of the Act by persons being within the prohibited degrees of affinity. This is unlimited, and we could hardly hold that such of those persons as had been married abroad were excluded from the benefit of the Act. Why should the relief be confined, and not allowed as large a range as the words will admit ? Clearly no intention appears to limit the operation of the words. The next clause, which nullifies the contract, is equally unlimited.

All marriages thereafter celebrated between persons within the prohibited degrees of consanguinity or affinity are declared to be null and void. We must give the same interpretation to the words in this section as to those in the former section. To whatsoever class the relief was extended, to the same class, in addition to those within the prohibited degrees of consanguinity, the prohibition must be applied. It is of course not denied that three or four additional words would have put the question at rest ; but why, when the words are 'all marriages,' without making any exception, are we to introduce an exception in order to give validity to the very marriages which the Legislature intended to render null and void ? The marriage now under consideration shows how expedient it was that the law should prohibit it. It is not like the exception in the Marriage Act of marriage in Scotland, which enabled parties without any real evasion of the law to marry there without the forms imposed by the Act—what was intended was expressed. Here, on the contrary, the enactment is general and unqualified, and, as

it was intended to create a personal inability, there is of course no exception. The answer to the argument, that the very case is not provided for in so many words, is, that with the Marriage Act before them, the framers of the new law would have introduced an exception to meet this case if such had been the intention. But when we advert to the nature of the contract, and the state of our law in relation to such a contract, which law is not altered by the new enactment, and bear in mind that the contrary law in a foreign country ought to receive no sanction here, opposed as it is to our law declaring such a contract to be contrary to God's law, we cannot fail to perceive that this case falls directly within the enactment that all such marriages shall be null and void.

His Lordship then commented on the case of the Duke of Sussex's alleged marriage, and the bearing of the decision on the Royal Marriage Act upon this case, and concluded thus :—

Upon the whole, therefore, I am clearly of opinion that this marriage was rendered void by the Act of William IV.; and I concur with my noble and learned friend on the woolsack, that the appeal should be dismissed, and the decree of the Vice-Chancellor affirmed.

Lord Wensleydale, after referring to the Act commonly called 'Lord Lyndhurst's Act,' proceeded as follows :—

The question, then, appears to me to be reduced to this single point, Was this such a marriage as the Ecclesiastical Court would have set aside if an application had been made to it for that purpose during the lives of both the married parties previous to the passing of the Act 5th and 6th William IV. chap. 54? If it would have been voidable in that case, before that Act, it is now, by its operation, absolutely void. I think it clear that it would have been set aside, and that the view taken, particularly by Sir Cresswell Cress-

well, in the first part of his opinion upon this part of the case, is perfectly correct.

It is the established principle, that every marriage is to be universally recognised which is valid according to the law of the place where it was had, whatever that law may be. This is the doctrine of Lord Stowell in the case of *Herbert v. Herbert* (2 Consistory Reports, 271). The same doctrine has been laid down in various authors, as by Sir Edward Simpson in *Scrimshire v. Scrimshire* (2 Haggard's Consistory Reports, 417), and by Story and others. If valid where it was celebrated, it is valid everywhere as to the constitution of the marriage and as to its ceremonies; but, as to the rights, duties, and obligations thence arising, the law of the domicile of the parties must be looked to. That is laid down by Story (section 110).

But this universally approved rule is subject to a qualification. Huber, in his 1st Book, tit. 3, art. 8, says : ' *Matrimonium, si licitum est eo loco ubi contractum et celebratum est, ubique validum erit effectumque habebit, sub eâdem exceptione præjudicii aliis non creandi; cui licet addere, si exempli nimis sit abominandi : ut si incestum juris gentium in secundo gradu contingeret alicubi esse permissum; quod vix est ut usu venire possit.*'

A similar qualification is introduced by Story, 113 *a*. He states that the most prominent, if not the only known, exceptions to the rule, are—First, those marriages involving polygamy and incest; second, those positively prohibited by the public law of a country from motives of policy; and a third, having no bearing upon the question before us. And as to the first exception, he adds, that 'Christianity is understood to prohibit polygamy and incest,' but this doctrine must be confined to such cases as by *general* consent of all Christendom are deemed incestuous.'

It would seem enough to say that the present case falls

within the two exceptions, for it is no doubt prohibited by the public law of this country. And it is by no means improbable that Story's meaning was to apply his first exception only to those cases to which the second could not apply, as suggested by my noble and learned friend,—to those cases, namely, in which there was no particular law in the country of the domicile of the parties in such marriages. And in that sense the position of Story is unobjectionable. His meaning would have been more clearly expressed if the second exception had been put the first, and the first made to apply where no such particular law existed.

It strikes me that this view of the case is correct, and therefore, in reality, it is quite unnecessary to discuss the question whether, where a marriage is objected to, not on the ground of its being against the positive prohibition of a country, but on the ground of incest, where there is no such prohibition, the incest must be of such a character as is described in his first exception.

If that question is to be considered, I perfectly agree with the convincing reasoning of Sir Cresswell Cresswell on this part of the case. What have we to do with the general consent of Christendom on the subject of incest in a question which relates to our own country alone? Amongst Christian nations different doctrines prevail, and surely the true question would be, not what is the doctrine of Christianity generally, in which all agree, nor what is the prevailing doctrine of Christian nations, but what is the doctrine on this subject of that branch of Christianity which this country professes? If it is condemned by us as forbidden by the law of God in Holy Scripture, no matter what opinions other Christian nations entertain on this question. This reasoning appears so very clear, that I must think that so able a man as Mr. Justice Story could never have meant to lay down the proposition, that, where any country prohibited a marriage on ac-

count of incest, it must be such quality of incest as to be of that character in universal Christendom. If he really did mean to state such a proposition, I must say that I think it cannot be supported.

I proceed, therefore, though I think it unnecessary, to show that this sort of marriage is forbidden in this country on the ground of its being against the Law of God, deduced from Holy Scripture. We have a distinct and clear opinion on this subject in a well-considered judgment of the Court of Queen's Bench, in the case of the *Queen v. Chadwick* (11 Queen's Bench Reports, page 205), which was argued for several days, and in which Lord Denman, Mr. Justice Coleridge, and Mr. Justice Wightman delivered very full and satisfactory judgments. It was held that marriages within the *prohibited* degrees mentioned in the Statute 5th and 6th William IV. chap. 54, were those within *Levitical* degrees, which, having been before voidable by suit in the Ecclesiastical Court, were by that statute absolutely avoided. The marriage of a widower with his wife's sister was considered as clearly falling within this class. The legislative declarations in Henry VIII.'s reign were considered as statutory expositions of what was intended by the term 'Levitical degrees,' whether those statutes in which they occur are repealed or not.

If we are to inquire into the latter question, whether they are repealed or not, it will require some research. The whole question is ably and distinctly stated in a note by the learned editor to the case of *Sherwood v. Ray* (1 Moore's Privy Council Reports, p. 357).

The state of the law appears to be this. The two statutes in which the term 'Levitical degrees' is explained, are the 25th Henry VIII. chap. 22, where they are enumerated, and include a wife's sister ; and the 28th Henry VIII. chap. 7, in the 9th section of which are described, by way of

recital, the degrees prohibited by God's laws in similar terms, with the addition of carnal knowledge of the husband in some cases, and with respect to them the prohibition of former statutes was re-enacted. The whole of this Act, 25th Henry VIII. chap. 22, was repealed by a statute of Queen Mary, and so was part of 28 Henry VIII. chap. 7; but not the part as to the prohibited degrees. That part was repealed by the 1st and 2nd Philip and Mary, chap. 8. But by the 1st Elizabeth, chap. 1, section 2, that Act was also repealed, except as therein mentioned, and several Acts were revived, not including the 28th Henry VIII. chap. 7, no doubt because it avoided the marriage with Ann Boleyn. But by the 10th section of the 28th Henry VIII. chap. 16 (which in the 2nd section referred to marriages prohibited by God's laws, as limited and declared in the 28th Henry VIII. chap. 7, or otherwise by Holy Scripture) all and every 'branches, words, and sentences in those several Acts contained, are revived, and are enacted to be in full force and strength to all intents and purposes.' The question is, whether that part of Henry VIII. chap. 7, which relates to prohibited degrees, and describes them, is thus revived? I think it is. But, whether it is or not, the statements in the statute are to be looked at as a statutory exposition of the meaning of the term 'Levitical degrees.' And that is the clear opinion of Lord Denman and Mr. Justice Coleridge in the case referred to.

The statute law of the country, which is binding on all its subjects, therefore must be considered as pronouncing that this marriage is a violation of the Divine law, and therefore that it is void within the first exception made by Mr. Justice Story, and within the principle of the exception laid down by Huber. If our laws are binding, or oblige us, as I think they do, to treat this marriage as a violation of the commands of God in Holy Scripture, we must consider it in

a court of justice as prejudicial to our social interest, and of hateful example. But, if not, it most clearly falls within the second exception stated by Story, which alone I think need be considered, as it is clearly illegal by the law of this country, whether it be considered incestuous or not, and a violation of that law.

I do not, therefore, in the least doubt that before the 5th and 6th William IV. it would have been pronounced void by the Ecclesiastical Court on a suit instituted during the life of both parties. And therefore I advise your Lordships that the judgment should be affirmed.

Fenton v. Livingstone. Livingstone v. Livingstone. Extracts from the Speeches of the Law Lords in giving Judgment, January 15, 1859.

A Scotchman, THURSTANUS LIVINGSTONE, domiciled in England, married in London SUSANNAH DUPUIS or BROWNE, a widow, and upon her death married, also in London, in 1808, her sister CATHERINE (she died in 1832). By her he left one son, ALEXANDER, born in 1809, who, if legitimate, is entitled to succeed to the estate in priority to his aunt, who claims it.

The Scotch Courts, misapprehending English law, decided in his favour; but the House of Lords reversed this decision for the reasons following:—

LORD BROUGHAM.

‘Was the marriage, then, of the respondent’s parents such that the law of Scotland could recognise its validity in dealing with the rights of the issue of it to take real estates by inheritance? First of all, let us consider if it was legal in the country where contracted, and where the parties had their domicile. It was clearly illegal by the law of England. That law treated it as incestuous by the rules of the Ecclesiastical Court, which alone has cognisance of this objection to a marriage. It could not be questioned, except during the lives of both husband and wife ; but it was illegal, and if questioned while both parties were alive, it must have been declared void *ab initio*. And why? Because it was contrary to law. The circumstance of one party to it having died before this dispute arose, and before it was questioned, did not make the marriage legal, though it precluded the possibility of setting it aside ; and the son was issue, not of a lawful marriage, but of a marriage which could not be questioned with effect, according to the rules of the Ecclesiastical Court, that Court alone having jurisdiction upon the question, by the rules which govern the Temporal Courts. But they hold the same principles on this subject as the Ecclesiastical, and would act upon them if they could entertain the question. Indeed, the 5 & 6 Will. IV. c. 54 (Lord Lyndhurst’s Act) proceeds upon the ground that marriages within the forbidden degrees of affinity are void if questioned, void because illegal ; and enacts that henceforth they shall be *ipso facto* void, and not voidable by any proceeding. And why? Because they are within the forbidden degrees, that is, because prohibited by law. It is unnecessary to inquire whether a marriage so void, if questioned in England before the Act, but prevented from being questioned by the course of procedure in the English court, could be questioned in Scotland, if the Scotch and English law differed upon the grounds of the objection, because the Scotch law is much more stringent on the subject than the English, holding all marriages within the forbidden degrees not only to be incestuous, but severely punishable, even capitally.’

‘If the *lex loci contractûs* were to prevail absolutely, and a marriage good in a country where it took place, and where the party claiming it was born, were to make that party inheritable in Scotland, then, uncle and niece marrying in a foreign country, with papal dispensation, their issue might claim to take a Scotch estate and Scotch honours, although, had the marriage been contracted in Scotland, the parties might have been capitally convicted, and sentenced to death or transportation, as in the case of Stewart and Wallace.’

LORD CRANWORTH.

‘Their decision proceeded on the ground that, as the marriage took place in England between parties domiciled there, the law of England must decide whether the marriage was or was not valid, and whether the issue of that marriage was or was not capable of entering as heir of the body of his parents lawfully procreate. They came to the conclusion that by the law of England the marriage was valid, and that the respondent was the eldest son of that marriage lawfully procreate, and therefore was entitled to succeed to the lands in question. After giving to this subject my best attention, I have come, though not without some fluctuation of opinion, to the conclusion that the Court of Session was wrong in treating this marriage as a valid marriage by the law of England, and in treating the respondent as the legitimate son of Thurstanus for the purpose of the Scotch succession. The statute 25 Hen. VIII. c. 22, s. 4, expressly enacts, *inter alia*, that no man shall marry his deceased wife’s sister, and, in case of any marriage being contracted in violation of that prohibition, the Ecclesiastical Court, with whom, in this country, jurisdiction on this subject exclusively rests, would declare any such marriage to be void. It is true that, by the construction put on that statute, no inquiry as to the validity of marriage could be instituted by the Ecclesiastical Court after the marriage itself had come to an end by the death of one of the parties; so that, inasmuch as the Temporal Courts had no jurisdiction, the issue would succeed to the estate of a deceased parent, as his or her heir, if no pro-

ceedings had been taken in the lifetime of both parents to declare the marriage void. I say to declare it void,—for it must be observed that the Court had no authority to interfere actively to dissolve any marriage validly contracted, but only to declare what the law was as to the alleged marriage,—the marriage *de facto*, as it was called,—to declare that there never was any marriage; to declare it “*fuisse et esse invalidum ab initio*.” That such a result must have followed a proceeding in the Ecclesiastical Court, calling in question the second marriage of Thurstanus, is a matter which can admit of no doubt. But if so, how can the true character of the marriage be altered by the accident of whether any third person did or did not think it worth while to call it in question? It is not the proceeding in the Ecclesiastical Court which made such a marriage void; no Court in this country could affect by its decree a valid marriage; its jurisdiction was only of a declaratory nature, that is, to declare the legal invalidity of an act already complete, but which was not what it purported to be—a marriage.

‘Where it has been the policy of the law of any country to prohibit marriage under any circumstances, the prohibition attaches to the subjects of that country wherever they go. It was on this principle that the case of the *Sussex Peerage* was decided. The marriage there was clearly valid according to the laws of the country where it was contracted; but it was held in this House that the Royal Marriage Act having prescribed certain steps by which alone the descendants of King George II. could contract marriage, the laws of this country would prevail wherever the marriage was contracted.’

LORD WENSLEYDALE.

‘My opinion is, that by the law of England the marriage of a widower with his deceased wife’s sister was always as illegal and invalid as a marriage with a sister, daughter, or mother was. This appears to be clear by the decision in the well-considered case of *Reg. v. Chadwick*, and *Reg. v. St. Giles*, in which the several statutes and authorities prior to Lord Lyndhurst’s Act, 5 & 6 Will. IV.

c. 54, are commented upon and considered. It was always deemed as being within the prohibited and Levitical degrees ; but, from the peculiarity that the question of the validity of marriage (with reference to this objection of being within the Levitical degrees) was matter of Ecclesiastical cognisance, and cognisable in the Spiritual Court alone, it could not be questioned after the death of either party, for it could not be dissolved by the Court then, as death had already dissolved it ; nor could the issue be bastardised, though the survivor might be visited with the Ecclesiastical censures. But the marriage was still an unlawful and forbidden marriage, and the issue really was born illegitimate, though the validity of the marriage and the legitimacy of the issue could not be questioned in the country of domicile, by reason of the rules of the peculiar law, which made these matters cognisable in one tribunal only in that country. The marriage would be good in one sense, because it could not be set aside, and the issue would be legitimate in that sense, because there were no means provided by the English law to deprive them of the rights belonging to legitimate issue ; but such marriages were all forbidden at the time of contracting them, all illegal, all capable of being set aside, as void *ab initio*, on account of their illegality ; and the comity of nations cannot require them to be held valid in another country, where there exist no means of setting them aside.'

LORD CHANCELLOR CHELMSFORD.

'The marriage of the parents of the respondent having taken place prior to 1835, it is necessary to consider what was the law of England, with respect to a marriage with a deceased wife's sister, before the Act of Parliament of that year. I think it cannot properly be questioned that such a marriage was void *ab initio*. Now there was a well-known maxim of our law, "Quod ab initio non valet, in tractu temporis non convalescit." This rule would have had its full force and operation in these marriages, if it had not been for the interference of the Temporal Courts with the proceedings of the Ecclesiastical Courts after the

death of one of the parents. This jurisdiction of the Temporal Courts appears to have been exercised in favour of the issue of the marriage, which they thus protected from being bastardised, by preventing the Ecclesiastical Courts from declaring a marriage to have been void, which had been already dissolved by death. For it is to be observed, as has been stated, that in these cases the Ecclesiastical Courts pronounced no decree of divorce, but merely made a declaration of the nullity of the marriage; and the Temporal Courts only restrained the Ecclesiastical Courts from making this declaration at a time when it could have no practical effect upon the marriage itself, and when its only operation would be to bastardise the issue. This is not unimportant, as showing that the question of the original validity of the marriage was not at all touched by the Temporal Courts thus disabling the Ecclesiastical from pronouncing a declaration respecting it. And that the Temporal Courts by their interposition did not profess to deal in any way with the validity of the marriage itself is shown, by their leaving the Ecclesiastical Courts at liberty to proceed to punish the surviving party for incest: a power which, according to the opinion of Sir H. Jenner Fust, continues even as to marriages protected by the Act of 1835. The respondent's condition therefore in England was this,—he was the offspring of a marriage which was incestuous and void, but of a marriage which by the course of events had become irrevocable.'

Marriage Law Defence Union Tracts.

No. LI.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

The Colonial Conference.

MARRIAGE WITH A WIFE'S SISTER AND NIECE.

April 14th, 1887.

PRESENT.

Sir H. HOLLAND, Bart., *President.*

REPRESENTATIVES.

<i>Newfoundland</i> .	Sir R. THORBURN, K.C.M.G., <i>Premier.</i>
	Sir AMBROSE SHEA, K.C.M.G.
<i>Canada</i> . . .	Sir ALEX. CAMPBELL, K.C.M.G., <i>Lieut.-Governor of Ontario.</i>
<i>New South Wales</i> .	Sir P. JENNINGS, K.C.M.G., <i>late</i> <i>Premier.</i>
	Sir R. WISDOM, K.C.M.G., <i>formerly</i> <i>Attorney-General.</i>
	Sir SAUL SAMUEL, K.C.M.G., C.B., <i>Agent-General.</i>
<i>Tasmania</i> . . .	Mr. J. S. DODDS, <i>late Attor.-Gen.</i>
	Mr. ADYE DOUGLAS, <i>Agent-General.</i>
<i>Cape of Good Hope</i> .	Sir T. UPPINGTON, K.C.M.G., <i>Agent-General.</i>
	Mr. J. H. HOFMEYR.
	Sir C. MILLS, K.C.M.G., C.B., <i>Agent-General.</i>
<i>South Australia</i> .	Sir J. W. DOWNER, K.C.M.G., Q.C., <i>Premier.</i>

<i>New Zealand</i>	.	.	Sir F. DILLON BELL, K.C.M.G., C.B., <i>Agent-General</i> .
			Sir W. FITZHERBERT, K.C.M.G., <i>Speaker of the Legislative Council</i> .
<i>Victoria</i>	.	.	Mr. A. DEAKIN, <i>Chief Secretary</i> .
			Sir J. LORIMER, K.C.M.G., <i>Minister of Defence</i> .
			Mr. J. SERVICE, <i>late Premier</i> .
<i>Queensland</i>	.	.	Sir J. GARRICK, K.C.M.G., Q.C., <i>Agent-General</i> .
<i>Western Australia</i>	.	.	Mr. J. FORREST, C.M.G., <i>Commis- sioner of Crown Lands</i> .
			Mr. S. BURT.
<i>Natal</i>	.	.	Mr. J. ROBINSON.

Sir J. W. DOWNER opened the discussion, saying that some of the Colonial representatives thought the present a very fitting opportunity for asking the English Government to pass some statute recognising the laws in the Colony permitting marriages between certain degrees prohibited in England. Immense interest had been taken in the subject in the Colonies. The history of the question might be briefly stated thus: South Australia was the first to pass a statute permitting such marriages, and it received the Royal assent in March, 1871. That statute permitted marriages in the province between a man and the sister of his deceased wife, or the sister's daughter. The Colony of Victoria two years later obtained the Royal assent to a statute permitting marriage with a deceased wife's sister, and not referring to the wife's daughter. The Tasmania Act was similar, and became law in August, 1873. New South Wales and Queensland made a similar law in the same year, the Queensland one providing, further, that such marriage should be valid if celebrated in the Colony, although the parties to it were not domiciled there, as would also that of domiciled Colonists be though celebrated elsewhere. There was very great difficulty in ascertaining precisely what the legal status in England would be of those who have contracted such marriages. In the only important decision upon it, Lord Wensleydale and Sir Cresswell Cresswell were

of opinion that whatever the domicile of the parties might have been, the marriage would anyhow have been void in England as being incestuous, while Lords Campbell and Cranworth held that a marriage valid where the parties to it were domiciled must be held to be valid in England ; but these being only *obiter*, have, of course, no legal force in deciding the question. This Mr. Downer considered an unsatisfactory condition of things, although he believed it to be the general opinion of English lawyers—and he knew it was that of Lord Justice Jessell, and he believed also of the greatest of English lawyers—that the opinion of Lord Campbell and Lord Cranworth was correct. He thought it should not remain a matter of doubt, but be put upon a perfectly intelligible and certain basis. Even assuming that a marriage would have been good had the parties been domiciled in a country where the marriage was lawful, it is indisputable, as far as its recognition in England is concerned, when it comes to the issue inheriting land, that the issue to inherit must be that of a marriage which would have been lawful had it been solemnised in the country where the land lies. As a matter of practical administration, going from these general principles to the manner in which the law is administered by the fiscal departments in England, as far as personality is concerned the marriage is considered good ; as far as realty is concerned the marriage is considered bad. Upon this point the delegates from the Colonies appeal to Her Majesty's Government for consideration and assistance.

The PRESIDENT remarked that we have got our law in this country and allowed the Colonists to have their law ; now they wanted us to change our law of inheritance, although we have not changed our law as to the validity of marriages in this country, because we have allowed some of the Colonies to make these marriages valid with them. There was no doubt that the marriage is valid for all purposes except that, as regards inheritance, the *lex loci* prevails. Both the Attorney-Generals had agreed to that. He wanted to know if there was any instance of a country in which such marriages are invalid, whether in the United States or elsewhere, where they were prepared to recognise them in

all their consequences, so that the issue could inherit land.

Sir J. W. DOWNER replied that there was not. Adding that there appeared to be an inconsistency in the English law recognising such marriages for one purpose but not for another.

In reply to Mr. Adye Douglas, the PRESIDENT said that the same applied to the Scotch law which legitimises children born before the marriage was entered into, and that though no one has ever doubted that the children are legitimate in Scotland, they cannot inherit in England.

Sir ALEXANDER CAMPBELL wished to say, on behalf of the Dominion of Canada, that they did not join in this request in any way, the law in Canada allowed a man to marry his deceased wife's sister. The same feeling which actuated the Canadians in altering their law, induced them to respect the feeling of England. Neither he nor his colleague Mr. Fleming had any instructions to represent that the Canadians desired any change in the law. They had altered their law to suit their own position, and were quite willing that the people of England should retain theirs until they saw a necessity for changing them.

Sir R. WISDOM thought that this one point of succession to real property was a grievance which tended more to create a feeling of irritation than any act of the Imperial Legislation, as tending to throw a slur on these marriages.

Sir T. UPINGTON failed to see how they could fairly ask the Imperial Government to introduce a measure interfering with the laws of inheritance or succession to property in this country. If persons marrying in the Colonies acquired property in England, they acquired it subject to the existing law of this country, and with full knowledge, and he did not think they could fairly ask that any change should be made in the law.

Sir WILLIAM FITZHERBERT could not concur in any proposal which, by a side wind, should have the effect of tending to alter the law of England in any respect. They were jealous of the privileges which had been granted to them by the Imperial Legislature, and he did not think

they ought to ask in consequence that the law of England should, by any indirect procedure, be altered.

Mr. DEAKIN was sure that the Colony of Victoria would hail with pleasure any movement on the part of the Imperial Government, not only to give sanction to the marriage, but to give all the consequences that follow from a legal marriage. He did not, however, think that they were entitled to say more at present.

Sir T. UPINGTON proposed that marriages lawfully entered into in the United Kingdom or the Colonies should be looked upon as valid marriages in every portion of Her Majesty's Dominions ; but that nothing contained in this proposal should be taken to affect the existing law of the United Kingdom, or of any Colony, with reference to property situated within the United Kingdom or that Colony.

Mr. DEAKIN thought by this they would gain a good deal, and

Mr. HOFMEYR that they would gain social status.

Mr. DODDS thought they would not. That the law of England now recognises the marriage contract, it being governed by the law of domicile as well as any other contract ; it was only with regard to the inheritance of property that there could be any difficulty. He did not see that Sir T. Upington's proposal would alter the position at all.

The PRESIDENT produced a draft of Sir T. Chambers' Colonial Marriages Bill of 1878, which was :

That from and after the passing of this Act, marriages which have been or which shall be hereafter contracted shall be deemed to be good and valid to all intents and purposes in the United Kingdom, and the issue of such marriages shall have all rights of succession, inheritance and otherwise, as if they had been the children of parents legally married in the United Kingdom.

Sir JAMES GARRICK said that Sir Samuel Griffith had left with him this proposed clause :

Every marriage which has been heretofore or shall be hereafter lawfully solemnised in any part of Her Majesty's Dominions between persons who at the time of the solemnisation of the marriage were domiciled in that part of Her Majesty's Dominions, and were competent according to the laws of that part of Her Majesty's Dominions to marry one another, shall throughout Her Majesty's Dominions be deemed and

held to be and have been a valid marriage to all intents and purposes. Provided nevertheless that this Act shall not render valid any marriage in any case in which either of the parties to the marriage has afterwards, and before the passing of this Act lawfully intermarried with another person; nor shall this Act be construed to deprive any person of any land or other property which he has lawfully inherited, or to which he has become lawfully entitled before the passing of this Act.

His view being that there cannot be a uniform law for the whole Empire, but that a marriage legally made in any one part of Her Majesty's Dominions by persons domiciled there, should be recognised as valid in every other part of Her Majesty's Dominions.

The PRESIDENT remarked that this went farther than the Bill above referred to, and would carry all the consequence of succession and inheritance.

Sir J. GARRICK replied, that it was no doubt Sir S. Griffith's intention that all the consequences of a valid marriage should follow. Although in Scotland the law of inheritance of real estate had not been changed by the recognition of children born before wedlock, he thought there was some difference between the position in Scotland and that of the Colonists.

Mr. ADYE DOUGLAS thought that the position taken up by Mr. Wisdom was that of the Colonists generally, it showed the absurdity of the law as it now stands, that the child of one of these marriages can take the personalty but but not the realty.

Sir H. DILLON BELL said the effect of the proposal which had just been made on behalf of Sir S. Griffith would be, that if any Colony declined to legalise marriage with a wife's sister, the proposed Bill would govern the succession of property in the recusant Colony, although it had refused to pass the Act. Suppose a person domiciled in the Colony which did allow it contracted such a marriage, and came and lived in a Colony that did now allow it and acquired property there. Then, merely because the marriage had been legal in the first Colony, the children would inherit, although the children of such a marriage contracted in the second Colony would not do so. This would undoubtedly be the effect of saying, that a marriage which was re-

cognised in a Colony should be good all over Her Majesty's Dominions.

Sir R. THORBURN could hardly acquiesce in the propriety of bringing any pressure to bear upon Her Majesty's Government suggesting legislation on this matter. There was no difficulty in any of the Colonial Legislatures passing a Bill giving effect to marriage with a deceased wife's sister, or not, as they pleased. In the Colony which he had the honour to represent, he thought the matter had never come up, and probably if it did, as there were a very large number of Roman Catholics in the country, who would probably oppose the Bill, and between them and the Church of England, which represented about two-thirds of the legislature, they would most likely not pass the Bill, and they would thus practically be in the same position as the people of England are. So, when they as Colonists came over here, he thought they should be satisfied to take the law as they found it. If a man married his wife's sister he could always protect his property by the operation of his will; and with all due deference to other members of the Conference, he thought it rather out of place for them to suggest legislation to the Imperial Government on a subject which had been so often and so prominently debated in both Houses of Parliament.

Mr. FORREST said that in Western Australia marriage with a wife's sister was legal, but he believed scarcely ever, if ever, made. He thought it unfortunate that there should be different laws as to marriage throughout the Empire. But he took the view of his friend Sir R. Thorburn, that the matter having been so fully discussed in both Houses of Parliament, it was scarcely wise on their part to try and bring pressure to bear. And besides, the people of the United Kingdom were in exactly the same position as those of any Colony which refused to pass the law. They had obtained from the Imperial Government consent to their law legalising these marriages, and he did not think that it would well become them now to turn round and say, "You sanctioned the law, and now you must alter your law to suit it."

N.B.—In the foregoing Summary, taken from the Official Report, Part I, issued in July, 1887, *it is to be noted that, of the above 21 Colonial Representatives, only 6 failed to recognise the unfairness of asking England to change her law of inheritance to suit Colonial convenience. On the other hand, the representatives of Canada and Newfoundland joined with those of New Zealand, Western Australia, and the Cape in deprecating anything of the sort, recognising the inconvenience that must accrue to any Colony which has not legalised marriage within the prohibited degrees, if the Mother Country were to do so.*

Marriage Law Defence Union Tracts.

No. LII.

OFFICE: 1 KING STREET, WESTMINSTER, S.W.

The Parliamentary Vicissitudes of the Deceased Wife's Sister Bill.

So much misunderstanding is prevalent as to the Parliamentary history of the Deceased Wife's Sister Bill, that the following brief statement of facts is put forth by the Marriage Law Defence Union Committee.

Its history begins in 1842, when the House of Commons, on a division, refused leave to Lord Francis Egerton to bring in the Bill.

This is the tenth Parliament since that of 1842, and only in three of these has the House of Commons passed the third reading of the Bill, viz., in those elected in 1847, 1857, and 1868.

It has been brought in at least in nineteen sessions, and only passed the House six times, viz., in 1850, 1858, 1859, 1870, 1871, and 1873, but was defeated on divisions in 1861, 1862, 1866, and 1875, and withdrawn for various reasons in the other years.

The highest majority in its favour was 99, in 1869, since which time opposition to the measure has greatly increased.

An analysis of the voting shows that, while in 1869 the majority was above one-fourth, being 99 in 387, in 1888 it fell below one-seventh, being 57 in 421.

In the House of Lords the Bill was rejected on the second reading in 1889 by 147 to 120, being a majority of 12 temporal peers.

Marriage Law Defence Union Tracts.

No. LIV.

OFFICE : 1 KING STREET, WESTMINSTER, S.W.

A LETTER FROM
THE LORD BISHOP OF BATH AND WELLS.

(REPRINTED FROM THE *Times* BY PERMISSION.)

The Deceased Wife's Sister Question.

TO THE EDITOR OF THE 'TIMES.'

SIR,—As I may not have an opportunity of speaking on the subject in the House of Lords next Thursday, I venture to ask you to allow me to state in your columns some of the views which I think ought to influence the House to reject the Bill for legalising marriage with a deceased wife's sister.

Much appears to me to depend upon the spirit in which we approach the subject. A more grave and momentous matter for legislation than the alteration of the marriage law of a country I cannot imagine. The marriage law lies at the very foundation of human society. It finds a place in the Bible prior to the fall of man. Many centuries before the Mosaic law was given, coeval with the creation

of man, at the very fountain head of our race, the word of God fixed the marriage law in its fundamental conditions. A moment's reflection shows us the wisdom of this pre-eminence given in Scripture to the relations of man and woman. For the family is the feature which distinguishes the human society and affects it in its most vital interests ; and the family, with all its sanctity and all its power to elevate and purify and civilise mankind, is absolutely dependent upon the marriage law. No nation with a corrupt marriage law ever rose, or ever can rise, to a high standard of civilisation. Disturb the marriage law and you disturb and weaken all the relations of man with man. Witness all countries where polygamy prevails and all nations where the marriage tie has in practice been loosened and despised. These considerations require that we should approach the whole subject of the marriage laws with reverential caution.

Another preliminary consideration of great weight in approaching the question of legalising marriage with a deceased wife's sister is the impossibility of stopping there. You have now a definite principle upon which your law is based. Relationship by consanguinity or affinity within a defined limit is a bar to marriage. But once break through that principle and allow marriage with a sister-in-law, and how can you forbid marriage with a brother's or uncle's widow, or with a mother-in-law, or a step-mother? And, not only so, but experience teaches the sad lesson that any relaxation of the law of marriage has a certain tendency to lead to other and worse relaxations. Let any one read the history of the Herod family in Josephus or elsewhere, or turn his attention to the state of marriage among the Romans in the time of the twelve Cæsars, and surely the loathsome record of incest, and adultery, and divorce, with all their train of shame and misery, will make him hesitate before he begins to pull down the fences which guard and protect the sanctity of matrimony.

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But these are only preliminary considerations, which do not decide the question whether marriage with a wife's sister is permissible by the laws of God, or is conducive to the welfare of mankind. To decide this we must turn to Holy Scripture first, and then get what light we can from our own reason.

Now, as regards Holy Scripture, I do not think we Christians must expect any direct precept on the subject. The Levitical law in its details does not apply to the Christian Church; but we can gather the spirit of the Divine law from its application to the Jews. Now, one of the causes of the extirpation of the nations of Canaan was their incestuous marriages, by which their land was defiled; and in the enumeration of those incestuous unions in the 18th and 20th chapters of Leviticus we find no distinction between relationship by blood and relationship by affinity. The uncle's wife is an aunt as much as father or mother's sister. The wife's relations are the same as the husband's (Levit. xviii. 17), and so on. It seems, therefore, inevitable to conclude that the wife's sister is in the same relation to the husband as his own sister. And this has been the sentiment of the Christian Church throughout all ages, and the law of our land has been conformed to it ever since we have been a nation.

And surely our own reason will confirm the conclusion which we gather from Holy Scripture. The introduction of suspicion, and jealousy, and intrigue into the closest family circles cannot be for the welfare or happiness of society. Either a dangerous license or galling restrictions of the freedom of brotherly and sisterly intercourse must be the consequence of the "abolition of sisters-in-law," to the great detriment of the family.

But it is said that in the interests of the poor it is expedient to legalise such marriages, because the sister-in-law is the person to whom the poor widower naturally turns to

take care of his motherless children. Can any one consider this argument for one minute without seeing its utter hollowness? If the poor man's sister-in-law is felt by him, and by her, and by the public opinion of his class, to be his sister, and not a possible bride, she will be able, as blamelessly and safely as if she was his sister by consanguinity, to go to his house and supply the place of the deceased mother to his children. But if the sister-in-law is a possible and probable bride, what will happen? If she is a virtuous woman she will refuse to place herself in a position of suspicion and danger, and so the legalising marriage with the wife's sister will have deprived the widower and his children of help at the time of need. If she is not a virtuous woman, or is a weak woman, she will go with the almost certainty of becoming his concubine till the time comes when he thinks it decent to marry. In this case the change of law will have directly promoted immorality.

It seems to me, therefore, that every consideration should induce us, whether as patriots or as Christians, to set our faces resolutely against the proposed change in the marriage law. And I earnestly hope the House of Lords will reject the Bill by such a decisive majority as will check for a long time the pernicious agitation of the question.

I remain, your faithful servant,

ARTHUR C. BATH & WELLS.

Palace, Wells :

May 6, 1889.

HISTORICAL SUMMARY.

IN offering a short notice of the controversy over the Table of Prohibited Degrees, and in particular the degree of Wife's Sister, a very brief explanation is all that is needed to explain the state of matters previously to 1835. At the Reformation the Church and Realm of England repudiated the doctrine of dispensations, and established a Table of Prohibited Degrees founded on the Scriptural prohibitions as interpreted by analogy and common sense, which endured, without modification, till 1835. At that date attention was called to an important blot, not upon the Table, but upon its legal working, namely, that marriages which were unlawful by reason of relationship were not what the lawyers called 'void,' but 'voidable,' or, in other words, that their illegality had to be declared by a suit during the lifetime of the parties, even if the marriage were between a father and a daughter, if such a horror could be conceived. Lord Lyndhurst's Act of 1835 set this right, and on that foundation of fact rests the monstrous figment that previously to that year the wife's sister's marriage was legal, and that Lord

Lyndhurst changed in that respect the law of England. Many years elapsed after the passing of Lord Lyndhurst's Act before the agitation, carefully nursed by a few opulent persons, for legalising marriages with wives' sisters, was set on foot. A few pamphlets, in which the relaxation was plausibly argued by lawyers, led the way, and the agitation first assumed Parliamentary shape during the long Peel Parliament in 1842, by leave being moved, to bring in a Bill, on the part of Lord Francis Egerton, afterwards Earl of Ellesmere. Although promoted by one so weighty as he was, yet the proposal was peremptorily snuffed out, through leave being refused to bring the bill in by 123 to 100. This was the first and last that was heard during that Parliament of any Bill, although in 1847 the Royal Commission for inquiry into the subject was granted with the consent of the opponents not less than of the advocates of the change. This inquiry, presided over by Bishop Lonsdale, produced a Blue Book, but failed to make out a case. In the next Parliament, that of 1847-52, the measure for the first time obtained, in 1849, the success of a second reading in the House of Commons, by 177 to 143, but only got into Committee to founder there, and be no more heard of for the Session. In 1850, after a majority of 182 to 130 on the second reading, it at length reached the haven of the Lords, merely to be summarily withdrawn upon the second reading, with-

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out so much as a division. Encouraged by this modicum of success, its promoters, in 1851, brought it into the Lords, and found themselves extinguished on the second reading by 50 to 16. A four years' lull ensued, during which the Parliament that sat from 1852 to 1857 was elected, and after this long hesitation the innovators plucked up courage to introduce the measure into the Commons in 1855, but with so little success as to be compelled, after the trivial majority of 7 (164 to 157) upon the second reading, to let it again founder at the fatal stage of the Committee. The House of Commons heard no more of the proposal during all this long Parliament; but its second appearance in the Upper House, in 1856, signified its rejection upon the second reading by 43 to 24. It was more actively pressed during the short Parliament of 1857-9, for in 1858, the second reading in the Commons passed by 176 to 134, followed by the rejection of the Bill in the Lords by 46 to 22; and in 1859 the Bill won a victory in the Lower House of 135 to 77, to succumb in the Upper to a majority of 49 to 39. From that day, and for eleven years, it was never again heard of in the Lords; while for ten of them its history in the popular House was a monotonous recital of successive defeats. In the Parliament of 1859-65 it was twice thrown out by the Commons. In 1861 the second reading was lost by 177 to 172. In 1862 it slipped through that stage

by 144 to 133 ; but on the subsequent division, taken upon the stage of the Speaker leaving the chair, it was thrown out by the substantial majority of 32 (148 to 116). It cropped up again in the first Session of the Parliament of 1865, under the patronage of Mr. Common-Serjeant Chambers, and was summarily snuffed out in the early part of 1866 upon the second reading, by 174 to 154. After that fatal day Mr. Chambers held his tongue till the meeting of Parliament in 1869, when he astonished himself and everybody else by carrying his second reading, one April afternoon, by 99 (243 to 144) ; and yet such was the normal infelicity of the ill-starred measure, that in spite of so great a majority so early in the Session, it capsized for the third time during its parliamentary life in the dangerous stage of Committee, and was quietly withdrawn at a much later period of the Session. In 1870, when the division was taken at the stage of the Speaker leaving the chair, upon an abstract resolution of Mr. Walpole, which pointed out that the change would not stop at that one degree of affinity, the majority had shrunk to the much less inflated figure of 70, namely, 184 to 114 ; and the Lords, whom the Bill at last reached after eleven years of calamity, taking the matter somewhat easily, voted 'not content' to it by only 4 (77 to 73). It was again brought in (1871) with all the factitious advantage of so narrow a rejection, and was pressed

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with such haste that the division upon the second reading was actually the first division of the Session, and was taken at a period when the members for Scotland and for Ireland, among whom generally have been found some of its most prominent opponents, had only partially come up to London. Yet the majority which had stood at 99 in 1869, and at 70 in 1870, fell down to 41 (125 to 84), while on a subsequent division, to strike out the retrospective portion of the Bill, it sank to the still smaller figure of 25. With these means the Bill came up to the Lords at a very early period of the Session, and was, in spite of Lord Penzance's advocacy, most unequivocally rejected.

Since that date, thirteen years have elapsed, and this is the third Parliament from it, and yet there have been only three divisions in the House of Commons—one in each Parliament—namely, in 1873, when it passed its second reading by 126 to 87; in the following Parliament, in 1875, when it was rejected on the second reading by 171 to 142, a majority of 29. The last division taken in the Lower House, upon a question for which popular favour is so clamorously pretended, was on an abstract resolution moved by Mr. Broadhurst, on May 6th, 1884, when the numbers were—for the motion, 236; against, 127. In the Lords it was in 1873 thrown out by 74 to 49; in 1879 by 101

to 81 ; in 1880 by 101 to 90 ; in 1882 by 132 to 128 ; while in 1883 it was read a second time by 165 to 158, and thrown out on the third reading by 145 to 140.

So much for the pretended weight of popular feeling as shown in the House of Commons, and for the vainglorious list of victories which Sir Thomas Chambers delights to recount, in the well-calculated hope that his hearers will forget that a rejection closes the roll of divisions for that session, while a success is naturally followed by an indefinite number of minor divisions in the Committee and during later stages.

During all this long time no sign has appeared of any popular desire for a measure ostensibly nursed by a few interested and opulent persons. For many years the society for its promotion was anonymous, except in the single name of an obscure secretary. Lord Hatherley and other trustworthy inquirers have conclusively shown that there is no grievance among the poor, and the hollowness of the propaganda is conclusively shown by the agitators having first included and then dropped the more distant degree of wife's niece, and by the factitious horror in which they indulge at the suggestion of extending the fancied relief to the identical degree of brother's widow.

A. J. B. BERESFORD-HOPE.

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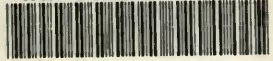
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